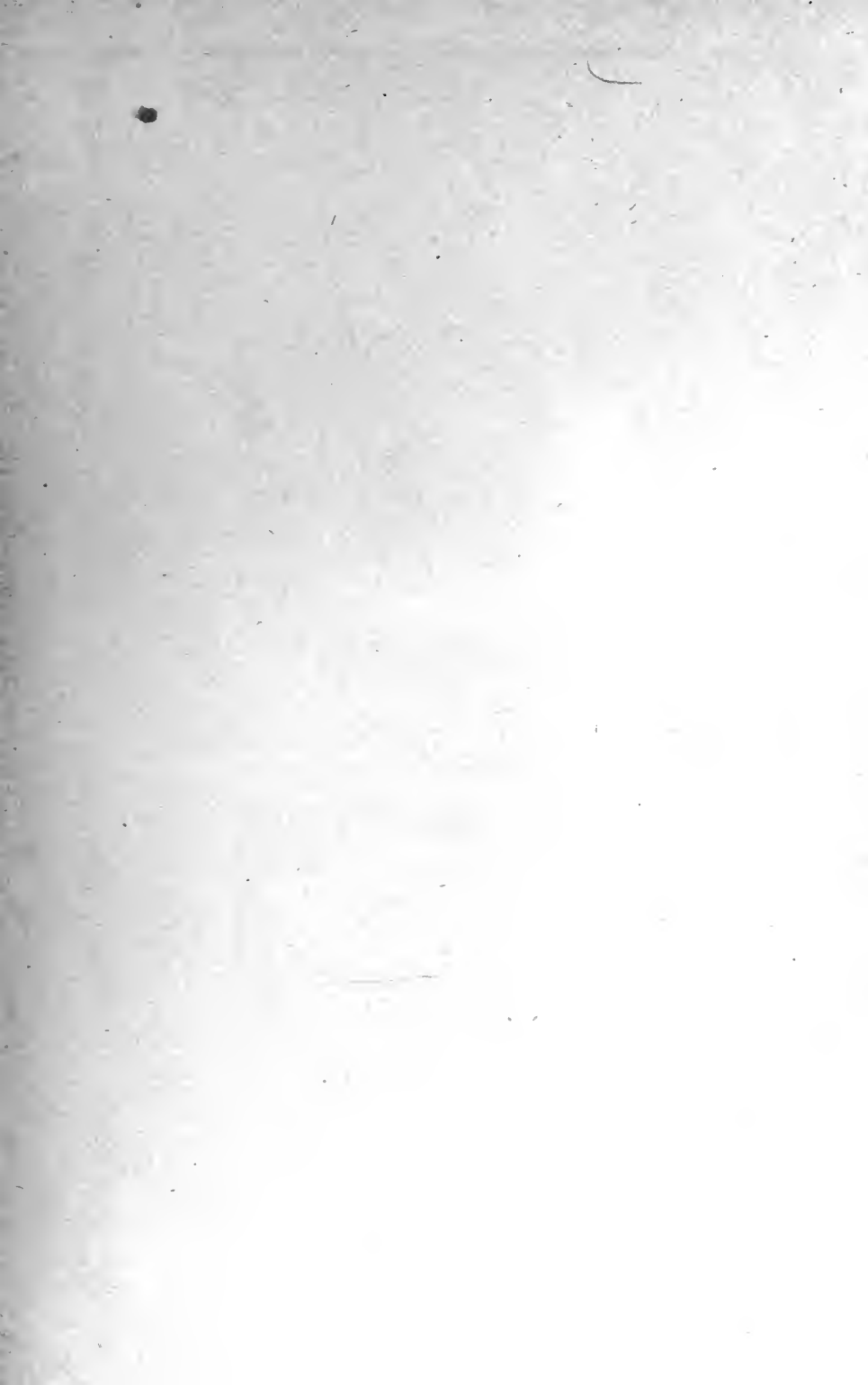




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HENDERSON'S
WAR TAX GUIDE
ACT OF OCTOBER 3, 1917

WITH

NOTES AND COMMENTARIES

ANNOTATED BY

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III

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"1917 War Revenue and Income Tax Guide"
"Federal Antitrust Laws"
"Federal Legislation" and
"Income Tax Puzzles"

FIRST EDITION

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PREFACE

This book covers the War Tax Act of October 3, 1917, annotated with those sections of the Income Tax Act of September 8, 1916, which are referred to, amended or repealed thereby.

Following the statute are all of the Treasury decisions, opinions, and court decisions, in alphabetical order, pertaining to the Act of 1917, which have been rendered since the publication of the author's previous work on this subject, "Federal Legislation" January 1, 1915.

The Federal Government obtains revenue from the tariff, excise, income, profits and inheritance taxes. Due to economical changes, the amount obtainable from internal revenue is not adequate to support the Government. In view of our foreign relations the tariff on imports is impractical. Hence the necessary funds to defray the expenses of the Government must be derived almost exclusively from tax on income, profits and estates. In the past, the interpretation of these laws has been delegated to the Commissioner of Internal Revenue.

A "Federal Tax Commission" should be created immediately in order to assist in the proper administration of the Federal Tax Laws. The time has now arrived when the tax payer is entitled to have a hearing before a competent tribunal on the difficult questions arising daily under these laws. Arbitrary ruling and judicial legislation by administrative officials is contrary to the fundamental principles from which the nation derives the right to tax the people.

Chicago, Illinois, U. S. A.

November 15, 1917.



1917 WAR TAX LAW

An Act to Provide Revenue to Defray War Expenses and for
Other Purposes.

Be it enacted by the Senate and House of Representatives of the
United States of America in Congress Assembled.

TITLE I. WAR INCOME TAX

Individual Normal Tax

Section 1. That in addition to the normal tax imposed by subdivision (a) of section one of the Act entitled "An Act to increase the revenue, and for other purposes," approved September eight, nineteen hundred and sixteen:¹

There shall be levied, assessed, collected, and paid a like normal tax of two per centum upon the income of every individual, a citizen or resident of the United States, received in the calendar year nineteen hundred and seventeen and every calendar year thereafter.

¹(ACT OF SEPTEMBER 8th, 1916) Section I (a) That there shall be levied, assessed, collected, and paid annually upon the entire net income received in the preceding calendar year from all sources by every individual, a citizen or resident of the United States, a tax of two per centum upon such income; and a like tax shall be levied, assessed, collected and paid annually upon the entire net income received in the preceding calendar year from all sources within the United States by every individual, a non-resident alien, including interest on bonds, notes, or other interest-bearing obligations of residents, corporate or otherwise.

INDIVIDUAL SUR-TAX

Section 2. That in addition to the additional tax imposed by subdivision (b) of section one of such Act of September eighth, nineteen hundred and sixteen:¹

There shall be levied, assessed, collected and paid a like additional tax upon the income of every individual received in the calendar year nineteen hundred and seventeen and every calendar year thereafter, as follows:

²(ACT OF SEPTEMBER 8, 1916.)

Section I (b) In addition to the income tax imposed by subdivision (a) of this section (herein referred to as the normal tax) there shall be levied, assessed, collected, and paid upon the total net income of every individual, or, in the case of a non-resident alien, the total net income received from all sources within the United States, an additional income tax (herein referred to as the additional tax) of one per centum per annum upon the amount by which such total net income exceeds \$20,000 and does not exceed \$40,000, two per centum per annum upon the amount by which such total net income exceeds \$40,000 and does not exceed \$60,000, three per centum per annum upon the amount by which such total net income exceeds \$60,000, and does not exceed \$80,000, four per centum per annum upon the amount by which such total net income exceeds \$80,000 and does not exceed \$100,000, five per centum per annum upon the amount by which such total net income exceeds \$100,000 and does not exceed \$150,000, six per centum per annum upon the amount by which such total net income exceeds \$150,000 and does not exceed \$200,000, seven per centum per annum upon the amount by which such total net income exceeds \$200,000 and does not exceed \$250,000, eight per centum per annum upon the amount by which such total net income exceeds \$250,000 and does not exceed \$300,000, nine per centum per annum upon the amount by which such total net income exceeds \$300,000 and does not exceed \$500,000, ten per centum per annum upon the amount by which such total net income exceeds \$500,000, and does not exceed \$1,000,000, eleven per centum per annum upon the amount by which such total net income exceeds \$1,000,000 and does not exceed \$1,500,000, twelve per centum per annum upon the amount by which such total net income exceeds \$1,500,000 and does not exceed \$2,000,000, and thirteen per centum per annum upon the amount by which such total net income exceeds \$2,000,000.

For the purpose of the additional tax there shall be included as income the income derived from dividends on the capital stock or from the net earnings of any corporation, joint-stock company or association, or insurance company, except that in the case of non-resident aliens such income derived from sources without the United States shall not be included.

All the provisions of this title relating to the normal tax on individuals, so far as they are applicable and are not inconsistent with this subdivision and section three, shall apply to the imposition, levy, assessment, and collection of the additional tax imposed under this subdivision.

One per centum per annum upon the amount by which the total net income exceeds \$5,000 and does not exceed \$7,500;

Two per centum per annum upon the amount by which the total net income exceeds \$7,500 and does not exceed \$10,000;

-Three per centum per annum upon the amount by which the total net income exceeds \$10,000 and does not exceed \$12,500;

Four per centum per annum upon the amount by which the total net income exceeds \$12,500 and does not exceed \$15,000;

Five per centum per annum upon the amount by which the total net income exceeds \$15,000 and does not exceed \$20,000;

Seven per centum per annum upon the amount by which the total net income exceeds \$20,000 and does not exceed \$40,000;

Ten per centum per annum upon the amount by which the total net income exceeds \$40,000 and does not exceed \$60,000;

Fourteen per centum per annum upon the amount by which the total net income exceeds \$60,000 and does not exceed \$80,000;

Eighteen per centum per annum upon the amount by which the total net income exceeds \$80,000 and does not exceed \$100,000;

Twenty-two per centum per annum upon the amount by which the total net income exceeds \$100,000 and does not exceed \$150,000;

Twenty-five per centum per annum upon the amount by which the total net income exceeds \$150,000 and does not exceed \$200,000;

Thirty per centum per annum upon the amount by which the total net income exceeds \$200,000 and does not exceed \$250,000;

Thirty-four per centum per annum upon the amount by which the total net income exceeds \$250,000 and does not exceed \$300,000;

Thirty-seven per centum per annum upon the amount by which the total net income exceeds \$300,000 and does not exceed \$500,000;

Forty per centum per annum upon the amount by which the total net income exceeds \$500,000 and does not exceed \$750,000;

Forty-five per centum per annum upon the amount by which the total net income exceeds \$750,000 and does not exceed \$1,000,000;

Fifty per centum per annum upon the amount by which the total income exceeds \$1,000,000.

Individual Exemptions

Section 3. That the taxes imposed by sections one and two of this Act shall be computed, levied, assessed, collected, and paid upon the same basis and in the same manner as the similar taxes imposed by section one of such Act of September eighth, nineteen hundred and sixteen:¹

Except that in the case of the tax imposed by section one of this Act (a) the exemptions of \$3,000 and \$4,000 provided in section seven of such Act of September eighth, nineteen hundred and sixteen:²

¹(ACT OF SEPTEMBER 8th, 1916) Section 1 (b) For the purpose of the additional tax there shall be included as income the income derived from dividends on the capital stock or from the net earnings of any corporation, joint-stock company or association, or insurance company, except that in the case of non-resident aliens such income derived from sources without the United States shall not be included.

All the provisions of this title relating to the normal tax on individuals, so far as they are applicable and are not inconsistent with this subdivision and section three, shall apply to the imposition, levy, assessment, and collection of the additional tax imposed upon this subdivision.

(c) The foregoing normal and additional tax rates shall apply to the entire net income, except as hereinafter provided, received by every taxable person in the calendar year nineteen hundred and sixteen and in each calendar year thereafter.

²(ACT OF SEPTEMBER 8th, 1916) Section 7 (a) That for the purpose of the normal tax only, there shall be allowed as an exemption in the nature of a deduction from the amount of the net income of each of said persons, ascertained as provided herein, the sum of \$3,000, plus \$1,000 additional if the person making the return be a head of a family or a married man with a wife living with him, or plus the sum of \$1,000 additional if the person making the return be a married woman with a husband living with her; but in no event shall this additional exemption of \$1,000 be deducted by both a husband and a wife: **Provided**, That only one deduction of \$4,000 shall be made from the aggregate income of both husband and wife when living together: **Provided further**, That guardians or trustees shall be allowed to make this personal exemption as to income derived from the property of which such guardian or trustee has charge in favor of each ward or cestui que trust: **Provided further**, That in no event shall a ward or cestui que trust be allowed a greater personal exemption than \$3,000, or, if married, \$4,000, as provided in this paragraph, from the amount of net income received from all sources. There shall also be allowed an exemption from the amount of the net income of estates of deceased persons during the period of administration or settlement, and of trust or other estates the income of which is not distributed annually or regularly under the provisions of paragraph (b), section two, the sum of \$3,000, including such deductions as are allowed under section five.

As amended by this Act shall be respectively \$1,000 and \$2,000, and (b) the returns required under subdivisions (b) and (c) of section eight of such Act:¹

As amended by this Act shall be required in the case if net income of \$1,000 or over, in the case of unmarried persons, and \$2,000 or over in the case of married persons, instead of \$3,000 or over, as therein provided, and (c) the provisions of subdivision (c) of section nine of such Act:²

¹(ACT OF SEPTEMBER 8th, 1916) Section 8 (b) On or before the first day of March, nineteen hundred and seventeen, and the first day of March in each year thereafter, a true and accurate return under oath shall be made by each person of lawful age, except as hereinafter provided, having a net income of \$3,000 or over for the taxable year to the collector of internal revenue for the district in which such person has his legal residence or principal place of business, or if there be no legal residence or place of business in the United States, then with the collector of internal revenue at Baltimore, Maryland, in such form as the Commissioner of Internal Revenue, with the approval of the Secretary of the Treasury, shall prescribe, setting forth specifically the gross amount of income from all separate sources, and from the total thereof deducting the aggregate items of allowances herein authorized: Provided, That the Commissioner of Internal Revenue shall have authority to grant a reasonable extension of time, in meritorious cases, for filing returns of income by persons residing or traveling abroad who are required to make and file returns of income and who are unable to file said returns on or before March first of each year: Provided further, That the aforesaid return may be made by an agent when by reason of illness, absence, or nonresidence the person liable for said return is unable to make and render the same, the agent, assuming the responsibility of making the return and incurring penalties provided for erroneous, false, or fraudulent return.

(c) Guardians, trustees, executors, administrators, receivers, conservators, and all persons, corporations, or associations acting in any fiduciary capacity, shall make and render a return of the income of the person, trust, or estate for whom or which they act, and be subject to all the provisions of this title which apply to individuals. Such fiduciary shall make oath that he has sufficient knowledge of the affairs of such person, trust or estate to enable him to make such return and that the same is, to the best of his knowledge and belief, true and correct, and be subject to all the provisions of this title which apply to individuals: Provided, That a return made by one of two or more joint fiduciaries filed in the district where such fiduciary resides, under such regulations as the Secretary of the Treasury may prescribe, shall be a sufficient compliance with the requirements of this paragraph.

²(ACT OF SEPTEMBER 8th, 1916) Section 9 (c) The amount of the normal tax hereinbefore imposed shall be deducted and withheld from fixed or determinable annual or periodical gains, profits, and income derived from interest upon bonds and mortgages, or deeds of trust or other similar obligations of corporations, joint-stock companies, associations, and insurance companies, whether payable annually or at shorter or longer periods, although such interest does not amount to \$3,000, subject to the provisions of this title requiring the tax to be withheld at the source and deducted from annual income and returned and paid to the Government.

As amended by this Act, requiring the normal tax of individuals on income derived from interest to be deducted and withheld at the source of the income shall not apply to the new two per centum normal tax prescribed in section one of this Act until on and after January first, nineteen hundred and eighteen, and thereafter only one two per centum normal tax shall be deducted and withheld at the source under the provisions of such subdivision (c), and any further normal tax for which the recipient of such income is liable under this Act or such Act of September eighth, nineteen hundred and sixteen, as amended by this Act, shall be paid by such recipient.

Computation of Income Tax

Section 4. That in addition to the tax imposed by subdivision (a) of section ten of such Act of September eighth, nineteen hundred and sixteen:¹

¹**Section 10.** That there shall be levied, assessed, collected, and paid annually upon the total net income received in the preceding calendar year from all sources by every corporation, joint-stock company or association, or insurance company, organized in the United States, no matter how created or organized but not including partnerships, a tax of two per centum upon such income; and a like tax shall be levied, assessed, collected, and paid annually upon the total net income received in the preceding calendar year from all sources within the United States by every corporation, joint-stock company, or association, or insurance company organized, authorized, or existing under the laws of any foreign country, including interest on bonds, notes, or other interest-bearing obligation of residents, corporate or otherwise, and including the income derived from dividends on capital stock or from net earnings of resident corporations, joint-stock companies or associations, or insurance companies whose net income is taxable under this title: Provided, That the term "dividends" as used in this title shall be held to mean any distribution made or ordered to be made by a corporation, joint-stock company, association, or insurance company, out of its earnings or profits accrued since March first, nineteen hundred and thirteen, and payable to its shareholders, whether in cash or in stock of the corporation, joint-stock company, association, or insurance company, which stock dividend shall be considered income, to the amount of its cash value.

The foregoing tax rate shall apply to the total net income received by every taxable corporation, joint-stock company or association, or insurance company in the calendar year nineteen hundred and sixteen and in each year thereafter, except that if it has fixed its own fiscal year under the provisions of existing law, the foregoing rate shall apply to the proportion of the total net income returned for the fiscal year ending prior to December thirty-first, nineteen hundred and sixteen, which the period between January first, nineteen hundred and sixteen, and the end of such fiscal year bears to the whole of such fiscal year, and the rate fixed in Section II of the Act approved October third, nineteen hundred and thirteen, entitled "An Act to reduce tariff duties and to provide revenue for the Government, and for other purposes," shall apply to the remaining portion of the total net income returned for such fiscal year.

For the purpose of ascertaining the gain derived or loss sustained from the sale or other disposition by a corporation, joint-stock company, or association, or insurance company, of property, real, personal, or

As amended by this Act, there shall be levied, assessed, collected and paid a like tax of four per centum upon the income received in the calendar year nineteen hundred and seventeen and every calendar year thereafter, by every corporation, joint-stock company or association, or insurance company, subject to the tax imposed by that subdivision of that section, except that if it has fixed its own fiscal year, the tax imposed by this section for the fiscal year ending during the calendar year nineteen hundred and seventeen shall be levied, assessed, collected, and paid only on that proportion of its income for such fiscal year which the period between January first, nineteen hundred and seventeen, and the end of such fiscal year bears to the whole of such fiscal year.

Computation of Income Tax

The tax imposed by this section shall be computed, levied, assessed, collected, and paid upon the same incomes and in the same manner as the tax imposed by subdivision (a) of section ten of such Act of September eighth, nineteen hundred and sixteen: (See Sec. 4, page 10 note.)

As amended by this Act, except that for the purpose of the tax imposed by this section the income embraced in a return of a corporation, joint-stock company or association, or insurance company, shall be credited with the amount received as dividends upon the stock or from the net earnings of any other corporation, joint-stock company or association, or insurance company, which is taxable upon its net income as provided in this title.

Territory Exempt

Section 5. That the provisions of this title shall not extend to Porto Rico or the Philippine Islands, and the Porto Rican or Philippine Legislature shall have power by due enactment to amend, alter, modify, or repeal the income tax laws in force in Porto Rico or the Philippine Islands, respectively.

TITLE II. WAR EXCESS PROFITS TAX

Terms Defined

Section 200. That when used in this title:

The term "corporation" includes joint-stock companies or associations and insurance companies;

The term "domestic" means created under the law of the United States, or of any State, Territory, or District thereof, and the term "foreign" means created under the law of any other possession of the United States or of any foreign country or government;

mixed, acquired before March first, nineteen hundred and thirteen, the fair market price or value of such property as of March first, nineteen hundred and thirteen, shall be the basis for determining the amount of such gain derived or loss sustained.

The term "United States" means only the States, the Territories of Alaska and Hawaii, and the District of Columbia;

The term "taxable year" means the twelve months ending December thirty-first, excepting in the case of a corporation or partnership which has fixed its own fiscal year, in which case it means such fiscal year. The first taxable year shall be the year ending December thirty-first, nineteen hundred and seventeen, except that in the case of a corporation or partnership which has fixed its own fiscal year, it shall be the fiscal year ending during the calendar year nineteen hundred and seventeen. If a corporation or partnership, prior to March first, nineteen hundred and eighteen, makes a return covering its own fiscal year, and includes therein the income received during that part of the fiscal year falling within the calendar year nineteen hundred and sixteen, the tax for such taxable year shall be that proportion of the tax computed upon the net income during such full fiscal year which the time from January first, nineteen hundred and seventeen, to the end of such fiscal year bears to the full fiscal year; and

The term "prewar period" means the calendar year nineteen hundred and eleven, nineteen hundred and twelve, and nineteen hundred and thirteen, or, if a corporation or partnership was not in existence or an individual was not engaged in a trade or business during the whole of such period, then as many of such years during the whole of which the corporation or partnership was in existence or the individual was engaged in the trade or business.

The terms "trade" and "business" include professions and occupations.

The term "net income" means in the case of a foreign corporation or partnership or a non-resident alien individual, the net income received from sources within the United States.

Tax on Excess Profits

Section 201. That in addition to the taxes under existing law and under this Act there shall be levied, assessed, collected, and paid for each taxable year upon the income of every corporation, partnership, or individual, a tax (hereinafter in this title referred to as the tax) equal to the following percentages of the net income:

Twenty per centum of the amount of the net income in excess of the deduction (determined as hereinafter provided) and not in excess of fifteen per centum of the invested capital for the taxable year;

Twenty-five per centum of the amount of the net income in excess of fifteen per centum and not in excess of twenty per centum of such capital;

Thirty-five per centum of the amount of the net income in excess of twenty per centum and not in excess of twenty-five per centum of such capital;

Forty-five per centum of the amount of the net income in excess of twenty-five per centum and not in excess of thirty-three per centum of such capital; and

Sixty per centum of the amount of the net income in excess of thirty-three per centum of such capital.

For the purpose of this title every corporation or partnership not exempt under the provisions of this section shall be deemed to be engaged in business, and all the trades and businesses in which it is engaged shall be treated as a single trade or business, and all its income from whatever source derived shall be deemed to be received from such trade or business.

Exemptions

This title shall apply to all trades or businesses of whatever description, whether continuously carried on or not, except—

(a) In the case of officers and employees under the United States, or any State, Territory, or the District of Columbia, or any local subdivision thereof, the compensation or fees received by them as such officers or employees;

(b) Corporations exempt from tax under the provisions of section eleven of Title I of such Act of September eighth, nineteen hundred and sixteen.¹

¹(ACT OF SEPTEMBER 8th, 1916) Section 11 (a) That there shall not be taxed under this title any income received by any—

First. Labor, agricultural, or horticultural organization;

Second. Mutual savings bank not having a capital stock represented by shares;

Third. Fraternal beneficiary society, order, or association, operating under the lodge system or for the exclusive benefit of the members of a fraternity itself operating under the lodge system, and providing for the payment of life, sick, accident, or other benefits to the members of such society, order, or association or their dependents;

Fourth. Domestic building and loan association and co-operative banks without capital stock organized and operated for mutual purposes and without profit;

Fifth. Cemetery company owned and operated exclusively for the benefit of its members;

Sixth. Corporation or association organized and operated exclusively for religious, charitable, scientific, or educational purposes, no part of the net income of which inures to the benefit of any private stockholder or individual;

Seventh. Business league, chamber of commerce, or board of trade, not organized for profit and no part of the net income of which inures to the benefit of any private stockholder or individual;

Eighth. Civic league or organization not organized for profit but operated exclusively for the promotion of social welfare;

Ninth. Club organized and operated exclusively for pleasure, recreation, and other nonprofitable purposes, no part of the net income of which inures to the benefit of any private stockholder or member;

Tenth. Farmers' or other mutual hail, cyclone, or fire insurance company, mutual ditch or irrigation company, mutual or cooperative telephone company, or like organization of a purely local character, the income of which consists solely of assessments, dues, and fees collected from members for the sole purpose of meeting its expenses;

Eleventh. Farmers', fruit growers', or like association, organized

As amended by this Act, and partnerships and individuals carrying on or doing the same business, or coming within the same description; and

(c) Incomes derived from the business of life, health, and accident insurance combined in one policy issued on the weekly premium payment plan.

Foreign Business

Section 202. That the tax shall not be imposed in the case of the trade or business of a foreign corporation or partnership or a non-resident alien individual, the net income of which trade or business during the taxable year is less than \$3,000.

Deductions

Section 203. That for the purpose of this title the deduction shall be as follows, except as otherwise in this title provided:

(a) In the case of a domestic corporation, the sum of (1) an amount equal to the same percentage of the invested capital for the taxable year which the average amount of the annual net income of the trade or business during the prewar period was of the invested capital for the prewar period (but not less than seven or more than nine per centum of the invested capital for the taxable year), and (2) \$3,000;

and operated as a sales agent for the purpose of marketing the products of its members and turning back to them the proceeds of sales, less the necessary selling expenses, on the basis of the quantity of produce furnished by them;

Twelfth. Corporation or association organized for the exclusive purpose of holding title to property, collecting income therefrom, and turning over the entire amount thereof, less expenses, to an organization which itself is exempt from the tax imposed by this title; or

Thirteenth. Federal land banks and national farm-loan associations as provided in section twenty-six of the Act approved July seventeenth, nineteen hundred and sixteen, entitled "An Act to provide capital for agricultural development, to create standard forms of investment based upon farm mortgage, to equalize rates of interest upon farm loans, to furnish a market for United States bonds, to create Government depositories and financial agents for the United States, and for other purposes."

Fourteenth. Joint stock land banks as to income derived from bonds or debentures of other joint stock land banks or any Federal land bank belonging to such joint stock land bank.

(b) There shall not be taxed under this title any income derived from any public utility or from the exercise of any essential governmental function accruing to any State, Territory, or the District of Columbia, or any political subdivision of a State or Territory, nor any income accruing to the government of the Philippine Islands or Porto Rico, or of any political subdivision of the Philippine Islands or Porto Rico: Provided, That whenever any State, Territory, or the District of Columbia, or any political subdivision of a State or Territory, has, prior to the passage of this title, entered in good faith into a contract with any person or corporation, the object and purpose of which is to acquire, construct, operate, or maintain a public utility, no tax shall be levied under the provisions of this title upon the income derived

(b) In the case of a domestic partnership or of a citizen or resident of the United States, the sum of (1) an amount equal to the same percentage of the invested capital for the taxable year which the average amount of the annual net income of the trade or business during the prewar period was of the invested capital for the prewar period (but not less than seven or more than nine per centum of the invested capital for the taxable year), and (2) \$6,000;

(c) In the case of a foreign corporation or partnership or of a non-resident alien individual, an amount ascertained in the same manner as provided in subdivisions (a) and (b) without any exemption of \$3,000 or \$6,000.

(d) If the Secretary of the Treasury is unable satisfactorily to determine the average amount of the annual net income of the trade or business during the prewar period, the deduction shall be determined in the same manner as provided in section two hundred and five.

If Not Engaged in the Business During Prewar Period

Section 204. That if a corporation or partnership was not in existence, or an individual was not engaged in the trade or business, during the whole of any one calendar year during the prewar period, the deduction shall be an amount equal to eight per centum of the invested capital for the taxable year, plus in the case of a domestic corporation \$3,000, and in the case of a domestic partnership or a citizen or resident of the United States \$6,000.

Continuation or Reorganization of a Business

A trade or business carried on by a corporation, partnership, or individual, although formally organized or reorganized on or after January second, nineteen hundred and thirteen, which is substantially a continuation of a trade or business carried on prior to that date, shall, for the purposes of this title, be deemed to have been in existence prior to that date, and the net income and invested capital of its predecessor prior to that date shall be deemed to have been its net income and invested capital.

Low Prewar Income

Section 205. (a) That if the Secretary of the Treasury, upon complaint finds either (1) that during the prewar period a domestic corporation or partnership, or a citizen or resident of the United States, had no net income from the trade or busi-

from the operation of such public utility, so far as the payment thereof will impose a loss or burden upon such State, Territory, or the District of Columbia, or a political subdivision of a State or Territory; but this provision is not intended to confer upon such person or corporation any financial gain or exemption or to relieve such person or corporation from the payment of a tax as provided for in this title upon the part or portion of the said income to which such person or corporation shall be entitled under such contract.

ness, or, (2) that during the prewar period the percentage, which the net income was of the invested capital, was low as compared with the percentage, which the net income during such period of representative corporations, partnerships, and individuals, engaged in a like or similar trade or business, was of their invested capital, then the deduction shall be the sum of (1) an amount equal to the same percentage of its invested capital for the taxable year which the average deduction (determined in the same manner as provided in section two hundred and three, without including the \$3,000 or \$6,000 therein referred to) for such year of representative corporations, partnerships, or individuals, engaged in a like or similar trade or business, is of their average invested capital for such year plus (2) in the case of a domestic corporation \$3,000, and in the case of a domestic partnership or a citizen or resident of the United States \$6,000.

Determination of Deductions

The percentage which the net income was of the invested capital in each trade or business shall be determined by the Commissioner of Internal Revenue, in accordance with regulations prescribed by him, with the approval of the Secretary of the Treasury. In the case of a corporation or partnership which has fixed its own fiscal year, the percentage determined by the calendar year ending during such fiscal year shall be used.

Claim for Abatement

(b) The tax shall be assessed upon the basis of the deduction determined as provided in section two hundred and three, but the taxpayer claiming the benefit of this section may at the time of making the return file a claim for abatement of the amount by which the tax so assessed exceeds a tax computed upon the basis of the deduction determined as provided in this section. In such event, collection of the part of the tax covered by such claim for abatement shall not be made until the claim is decided, but if in the judgment of the Commissioner of Internal Revenue, the interests of the United States would be jeopardized, thereby he may require the claimant to give a bond in such amount and with such sureties as the commissioner may think wise to safeguard such interests, conditioned for the payment of any tax found to be due, with the interest thereon, and if such bond, satisfactory to the commissioner, is not given within such time as he prescribes, the full amount of tax assessed shall be collected and the amount overpaid, if any, shall upon final decision of the application be refunded as a tax erroneously or illegally collected.

Ascertainment of the Net Income

Section 206. That for the purposes of this title the net income of a corporation shall be ascertained and returned (a) for the calendar years nineteen hundred and eleven and nineteen

hundred and twelve upon the same basis and in the same manner as provided in section thirty-eight of the Act entitled "An Act to provide revenue, equalize duties, and encourage the industries of the United States, and for other purposes," approved August fifth, nineteen hundred and nine, except that income taxes paid by it within the year imposed by the authority of the United States shall be included; (b) for the calendar year nineteen hundred and thirteen upon the same basis and in the same manner as provided in section II of the Act entitled "An Act to reduce tariff duties and to provide revenue for the Government, and for other purposes," approved October third, nineteen hundred and thirteen, except that income taxes paid by it within the year imposed by the authority of the United States shall be included, and except that the amounts received by it as dividends upon the stock or from the net earnings of other corporations, joint-stock companies or associations, or insurance companies, subject to the tax imposed by section II of such Act of October third, nineteen hundred and thirteen, shall be deducted; and (c) for the taxable year upon the same basis and in the same manner as provided in Title I of the Act entitled "An Act to increase the revenue and for other purposes," approved September eighth, nineteen hundred and sixteen:¹

¹(ACT OF SEPTEMBER 8th, 1916) Section 2 (a) That, subject only to such exemptions and deductions as are hereinafter allowed, the net income of a taxable person shall include gains, profits, and income derived from salaries, wages, or compensation for personal service or whatever kind and in whatever form paid, or from professions, vocations, businesses, trade, commerce, or sales, or dealings in property, whether real or personal, growing out of the ownership or use of or interest in real or personal property, also from interest, rent, dividends, securities, or the transaction of any business carried on for gain or profit, or gains or profits and income derived from any source whatever: Provided, That the term "dividends" as used in this title shall be held to mean any distribution made or ordered to be made by a corporation, joint-stock company, association, or insurance company, out of its earnings or profits accrued since March first, nineteen hundred and thirteen, and payable to its shareholders, whether in cash or in stock of the corporation, joint-stock company, association, or insurance company, which stock dividend shall be considered income, to the amount of its cash value.

(b) Income received by estates of deceased persons during the period of administration or settlement of the estate, shall be subject to the normal and additional tax and taxed to their estates, and also such income of estates or any kind of property held in trust, including such income accumulated in trust for the benefit of unborn or unascertained persons, or persons with contingent interests, and income held for future distribution under the terms of the will or trust shall be likewise taxed, the tax in each instance, except when the income is returned for the purpose of the tax by the beneficiary, to be assessed to the executor, administrator, or trustee, as the case may be: Provided, That where the income is to be distributed annually or regularly between existing heirs or legatees, or beneficiaries the rate of tax and method of computing the same shall be based in each case upon the amount of the individual share to be distributed.

Such trustees, executors, administrators, and other fiduciaries are

As amended by this Act, except that the amounts received by it as dividends upon the stock or from the net earnings of other corporations, joint-stock companies or associations, or insurance companies, subject to the tax imposed by Title I of such Act of September eighth, nineteen hundred and sixteen, shall be deducted.

Partnerships and Individuals

The net income of a partnership or individual shall be ascertained and returned for the calendar years nineteen hundred and eleven, nineteen hundred and twelve, nineteen hundred and thirteen, and for the taxable year, upon the same basis and in the same manner as provided in Title I of such Act of September eighth, nineteen hundred and sixteen, as amended by this Act, except that the credit allowed by subdivision (b) of section five of such Act shall be deducted.¹

There shall be allowed (a) in the case of a domestic partnership the same deductions as allowed to individuals in subdivision (a) of section five of such Act of September eighth, nineteen hundred and sixteen:²

hereby indemnified against the claims or demands of every beneficiary for all payments of taxes which they shall be required to make under the provisions of this title, and they shall have credit for the amount of such payments against the beneficiary or principal in any accounting which they make as such trustees or other fiduciaries.

(c) For the purpose of ascertaining the gain derived from the sale or other disposition of property, real, personal, or mixed, acquired before March first, nineteen hundred and thirteen, the fair market price or value of such property as of March first, nineteen hundred and thirteen, shall be the basis for determining the amount of such gain derived.

¹(ACT OF SEPTEMBER 8th, 1916) Section 5 (b) For the purpose of the normal tax only, the income embraced in a personal return shall be credited with the amount received as dividends upon the stock or from the net earnings of any corporation, joint-stock company or association, trustee, or insurance company, which is taxable upon its net income as hereinafter provided.

²(ACT OF SEPTEMBER 8th, 1916) Section 5 (a) That in computing net income in the case of a citizen or resident of the United States—

(a) For the purpose of the tax there shall be allowed as deductions—

First. The necessary expenses actually paid in carrying on any business or trade, not including personal, living, or family expenses;

Second. All interest paid within the year on his indebtedness;

Third. Taxes paid within the year imposed by the authority of the United States, or its Territories, or possessions, or any foreign country, or under the authority of any State, county, school district, or municipality, or other taxing subdivision of any State, not including those assessed against local benefits;

Fourth. Losses actually sustained during the year, incurred in his business or trade, or arising from fires, storms, shipwreck, or other casualty, and from theft, when such losses are not compensated for by insurance or otherwise: Provided, That for the purpose of ascertaining the loss sustained from the sale or other disposition of property, real, personal, or mixed, acquired before March first, nineteen hundred and thirteen, the fair market price or value of such property as of March

as amended by this Act; and (b) in the case of a foreign partnership the same deductions as allowed to individuals in subdivision (a) of section six of such Act¹ as amended by this Act.

first, nineteen hundred and thirteen, shall be the basis for determining the amount of such loss sustained;

Fifth. In transactions entered into for profit but not connected with his business or trade, the losses actually sustained therein during the year to an amount not exceeding the profits arising therefrom;

Sixth. Debts due to the taxpayer actually ascertained to be worthless and charged off within the year;

Seventh. A reasonable allowance for the exhaustion, wear and tear of property arising out of its use or employment in the business or trade;

Eighth (a) In the case of oil and gas wells a reasonable allowance for actual reduction in flow and production to be ascertained not by the flush flow, but by the settled production or regular flow; (b) in the case of mines a reasonable allowance for depletion thereof not to exceed the market value in the mine of the product thereof, which has been mined and sold during the year for which the return and computation are made, such reasonable allowance to be made in the case of both (a) and (b) under rules and regulations to be prescribed by the Secretary of the Treasury: Provided, That when the allowances authorized in (a) and (b) shall equal the capital originally invested or in case of purchase made prior to March first, nineteen hundred and thirteen, the fair market value as of that date, no further allowance shall be made. No deduction shall be allowed for any amount paid out for new buildings, permanent improvements, or betterments, made to increase the value of any property or estate, and no deduction shall be made for any amount of expense of restoring property or making good the exhaustion thereof for which an allowance is or has been made.

"That section five of such Act of September eighth, nineteen hundred and sixteen, is hereby amended by adding at the end of subdivision (a) a further paragraph, numbered nine, to read as follows:

"**Ninth.** Contributions or gifts actually made within the year of corporations or associations organized and operated exclusively for religious, charitable, scientific, or educational purposes, or to societies for the prevention of cruelty to children or animals, no part of the net income of which inures to the benefit of any private stockholder or individual, to an amount not in excess of fifteen per centum of the taxpayer's taxable net income as computed without the benefit of this paragraph. Such contributions or gifts shall be allowable as deductions only if verified under rules and regulations prescribed by the Commissioner of Internal Revenue, with the approval of the Secretary of the Treasury."

¹(ACT OF SEPTEMBER 8th, 1916) Section 6. That in computing net income in the case of a nonresident alien—

(a) For the purpose of the tax there shall be allowed as deductions—

First. The necessary expenses actually paid in carrying on any business or trade conducted by him within the United States, not including personal, living, or family expenses;

Second. The proportion of all interest paid within the year by

Invested Capital Defined

Section 207. That as used in this title, the term "invested capital" for any year means the average invested capital for the year, as defined and limited in this title, averaged monthly.

As used in this title "invested capital" does not include stocks, bonds (other than obligations of the United States), or other assets, the income from which is not subject to the tax imposed by this title nor money or other property borrowed, and means, subject to the above limitations;

Corporations or Partnerships

(a) In the case of a corporation or partnership: (1) Actual cash paid in, (2) the actual cash value of tangible property paid in other than cash, for stock or shares in such corporation or partnership, at the time of such payment (but in case such tangible property was paid in prior to January first, nineteen hundred and fourteen, the actual cash value of such property as of January first, nineteen hundred and fourteen, but in no case to exceed the par value of the original stock or shares specifically issued therefor), and (3) paid in or earned surplus and undivided

such person on his indebtedness which the gross amount of his income for the year derived from sources within the United States bears to the gross amount of his income for the year derived from all sources within and without the United States, but this deduction shall be allowed only if such person includes in the return required by section eight all the information necessary for its calculation;

Third. Taxes paid within the year imposed by the authority of the United States, or its Territories, or possessions, or under the authority of any State, county, school district, or municipality, or other taxing subdivision of any State, paid within the United States, not including those assessed against local benefits;

Fourth. Losses actually sustained during the year, incurred in business or trade conducted by him within the United States, and losses of property within the United States arising from fires, storms, shipwreck, or other casualty, and from theft, when such losses are not compensated for by insurance or otherwise: Provided, That for the purpose of ascertaining the amount of such loss or losses sustained in trade, or speculative transactions not in trade, from the same or any kind of property acquired before March first, nineteen hundred and thirteen, the fair market price or value of such property as of March first, nineteen hundred and thirteen, shall be the basis for determining the amount of such loss or losses sustained;

Fifth. In transactions entered into for profit but not connected with his business or trade, the losses actually sustained therein during the year to an amount not exceeding the profits arising therefrom in the United States;

Sixth. Debts arising in the course of business or trade conducted by him within the United States due to the taxpayer actually ascertained to be worthless and charged off within the year;

Seventh. A reasonable allowance for the exhaustion, wear and tear of property within the United States arising out of its use or employment in the business or trade; (a) in the case of oil and gas wells a reasonable allowance for actual reduction in flow and production to be ascertained not by the flush flow, but by the settled production or regular flow; (b) in the case of mines a reasonable allowance for de-

profits used or employed in the business, exclusive of undivided profits earned during the taxable year: Provided, That (a) the actual cash value of patents and copyrights paid in for stock or shares in such corporation or partnership, at the time of such payment, shall be included as invested capital but not to exceed the par value of such stock or shares at the time of such payment, and (b) the good will, trade-marks, trade brands, the franchise of a corporation or partnership, or other intangible property, shall be included as invested capital if the corporation or partnership made payment bona fide therefor specifically as such in cash or tangible property, the value of such good will, trade-mark, trade brand, franchise, or intangible property, not to exceed the actual cash or actual cash value of the tangible property paid therefor at the time of such payment; but good will, trade-marks, trade brands, franchise of a corporation or partnership, or other intangible property, bona fide purchased, prior to March third, nineteen hundred and seventeen, for and with interests or shares in a partnership or for and with shares in the capital stock of a corporation (issued prior to March third, nineteen hundred and seventeen), in an amount not to exceed, on March third, nineteen hundred and seventeen, twenty per centum of the total interests or shares in the partnership or of the total shares of the capital stock of the corporation, shall be included in invested capital at a value not to exceed the actual cash value at the time of such purchase, and in case of issue of stock therefor not to exceed the par value of such stock;

Individuals

(b) In the case of an individual, (1) actual cash paid into the trade or business, and (2) the actual cash value of tangible property paid into the trade or business, other than cash, at the time of such payment (but in case such tangible property was paid in prior to January first, nineteen hundred and fourteen, the actual cash value of such property as of January first, nineteen hundred and fourteen), and (3) the actual cash value of patents, copyrights, good will, trade-marks, trade brands, franchises, or other intangible property, paid into the trade or business, at

pletion thereof not to exceed the market value in the mine of the product thereof which has been mined and sold during the year for which the return and computation are made, such reasonable allowance to be made in the case of both (a) and (b) under rules and regulations to be prescribed by the Secretary of the Treasury: Provided, That when the allowance authorized in (a) and (b) shall equal the capital originally invested, or in case of purchase made prior to March first, nineteen hundred and thirteen, the fair market value as of that date, no further allowance shall be made. No deduction shall be allowed for any amount paid out for new buildings, permanent improvements, or betterments, made to increase the value of any property or estate, and no deduction shall be made for any amount of expense of restoring property or making good the exhaustion thereof for which an allowance is or has been made.

the time of such payments, if payment was made therefor specifically as such in cash or tangible property, not to exceed the actual cash or actual cash value of the tangible property bona fide paid therefor at the time of such payment.

Foreign

In the case of a foreign corporation or partnership or of a non-resident alien individual the term "invested capital" means that proportion of the entire invested capital, as defined and limited in this title, which the net income from sources within the United States bears to the entire net income.

Change of Business Ownership

Section 208. That in case of the reorganization, consolidation or change of ownership of a trade or business after March third, nineteen hundred and seventeen, if an interest or control in such trade or business of fifty per centum or more remains in control of the same persons, corporations, associations, partnerships, or any of them, then in ascertaining the invested capital of the trade or business no asset transferred or received from the prior trade or business shall be allowed a greater value than would have been allowed under this title in computing the invested capital of such prior trade or business if such asset had not been so transferred or received, unless such asset was paid for specifically as such, in cash or tangible property, and then not to exceed the actual cash or actual cash value of the tangible property paid therefor at the time of such payment.

Nominal Capital

Section 209. That in the case of a trade or business having no invested capital or not more than a nominal capital there shall be levied, assessed, collected and paid, in addition to the taxes under existing law and under this Act, in lieu of the tax imposed by section two hundred and one, a tax equivalent to eight per centum of the net income of such trade or business in excess of the following deductions: In the case of a domestic corporation \$3,000, and in the case of a domestic partnership or a citizen or resident of the United States \$6,000; in the case of all other trades or business, no deduction:

Invested Capital Undeterminable

Section 210. That if the Secretary of the Treasury is unable in any case satisfactorily to determine the invested capital, the amount of the deduction shall be the sum of (1) an amount equal to the same proportion of the net income of the trade or business received during the taxable year as the proportion which the average deduction (determined in the same manner as provided in section two hundred and three, without including the \$3,000 or \$6,000 therein referred to) for the same calendar year

of representative corporations, partnerships, and individuals, engaged in a like or similar trade or business, bears to the total net income of the trade or business received by such corporations, partnerships, and individuals, plus (2) in the case of a domestic corporation \$3,000, and in the case of a domestic partnership or a citizen or resident of the United States \$6,000.

For the purpose of this section the proportion between the deduction and the net income in each trade or business shall be determined by the Commissioner of Internal Revenue in accordance with regulations prescribed by him, with the approval of the Secretary of the Treasury. In the case of a corporation or partnership, which has fixed its own fiscal year, the proportion determined for the calendar year ending during such fiscal year shall be used.

Returns

Section 211. That every foreign partnership having a net income of \$3,000 or more for the taxable year, and every domestic partnership having a net income of \$6,000 or more for the taxable year, shall render a correct return of the income of the trade or business for the taxable year, setting forth specifically the gross income for such year, and the deductions allowed in this title. Such returns shall be rendered at the same time and in the same manner as is prescribed for income-tax returns under Title I of such Act of September eighth, nineteen hundred and sixteen, as amended by this Act.

General Provisions

Section 212. That all administrative, special, and general provisions of law, including the laws in relation to the assessment, remission, collection, and refund of internal revenue taxes not heretofore specifically repealed, and not inconsistent with the provisions of this title are hereby extended and made applicable to all the provisions of this title and to the tax herein imposed, and all provisions of Title I of such Act of September eighth, nineteen hundred and sixteen, as amended by this Act, relating to returns and payment of the tax therein imposed, including penalties, are hereby made applicable to the tax imposed by this title.

Section 213. That the Commissioner of Internal Revenue, with the approval of the Secretary of the Treasury, shall make all necessary regulations for carrying out the provisions of this title, and may require any corporation, partnership, or individual, subject to the provisions of this title, to furnish him with such facts, data, and information as in his judgment are necessary to collect the tax imposed by this title.

Excess Profit Tax of March 3, 1917, Repealed

Section 214. That Title II (sections two hundred to two hundred and seven, inclusive) of the Act entitled "An Act to pro-

vide increased revenue to defray the expenses of the increased appropriations for the Army and Navy, and the extensions of fortifications, and for other purposes," approved March third, nineteen hundred and seventeen, is hereby repealed.¹

'REPEALED. (ACT OF MARCH 3, 1917) Section 200. That when used in this title—

The term "corporation" includes joint-stock companies or associations, and insurance companies;

The term "United States" means only the States, the Territories of Alaska and Hawaii, and the District of Columbia; and

The term "taxable year" means the twelve months ending December thirty-first, except in the case of a corporation or partnership allowed to fix its own fiscal year, in which case it means such fiscal year. The first taxable year shall be the year ending December thirty-first, nineteen hundred and seventeen.

Section 201. That in addition to the taxes under existing laws there shall be levied, assessed, collected, and paid for each taxable year upon the net income of every corporation and partnership organized, authorized, or existing under the laws of the United States, or of any State, Territory, or District thereof, no matter how created or organized, excepting income derived from the business of life, health, and accident insurance combined in one policy issued on the weekly premium payment plan, a tax of eight per centum of the amount by which such net income exceeds the sum of (a) \$5,000 and (b) eight per centum of the actual capital invested.

Every foreign corporation and partnership, including corporations and partnerships of the Philippine Islands and Porto Rico, shall pay for each taxable year a like tax upon the amount by which its net income received from all sources within the United States exceeds the sum of (a) eight per centum of the actual capital invested and used or employed in the business in the United States, and (b) that proportion of \$5,000 which the entire actual capital invested and used or employed in the business in the United States bears to the entire actual capital invested; and in case no such capital is used or employed in the business in the United States the tax shall be imposed upon that portion of such net income which is in excess of the sum of (a) eight per centum of that proportion of the entire actual capital invested and used or employed in the business which the net income from sources within the United States bears to the entire net income, and (b) that proportion of \$5,000 which the net income from sources within the United States bears to the entire net income.

Section 202. That for the purpose of this title, actual capital invested means (1) actual cash paid in, (2) the actual cash value, at the time of payment, of assets other than cash paid in, and (3) paid in or earned surplus and undivided profits used or employed in the business; but does not include money or other property borrowed by the corporation or partnership.

Section 203. That the tax herein imposed upon corporations and partnerships shall be computed upon the basis of the net income shown by their income tax returns under Title I of the Act entitled "An Act to increase the revenue, and for other purposes," approved September eighth, nineteen hundred and sixteen, or under this title, and shall be assessed and collected at the same time and in the same manner as the income tax due under Title I of such Act of September eighth, nineteen hundred and sixteen: Provided, That for the purpose of this title a partnership shall have the same privilege with reference to fixing its fiscal year as is accorded corporations under section thirteen (a) of Title I of such Act of September eighth, nineteen hundred and sixteen: And provided further, That where a corporation or partnership

Refunds

Any amount heretofore or hereafter paid on account of the tax imposed by such Title II, shall be credited toward the payment of the tax imposed by this title, and if the amount so paid exceeds the amount of such tax the excess shall be refunded as a tax erroneously or illegally collected.

MUNITION TAX

Amendments

Subdivision (1) of section three hundred and one of such Act of September eighth, nineteen hundred and sixteen, is hereby amended so that the rate of tax for the taxable year nineteen hundred and seventeen shall be ten per centum instead of twelve and one-half per centum, as therein provided.

Subdivision (2) of such section:¹
is hereby amended to read as follows:

"(2) This section shall cease to be of effect on and after January first, nineteen hundred and eighteen."

TITLE III. WAR TAX ON BEVERAGES

Distilled Spirits

Section 300. That on and after the passage of this Act there shall be levied and collected on all distilled spirits in bond at that time or that have been or that may be then or thereafter produced in or imported into the United States, except such distilled spirits as are subject to the tax provided in section

makes return prior to March first, nineteen hundred and eighteen, covering its own fiscal year and includes therein any income received during the calendar year ending December thirty-first, nineteen hundred and sixteen, the tax herein imposed shall be that proportion of the tax based upon such full fiscal year which the time from January first, nineteen hundred and seventeen, to the end of such fiscal year bears to the full fiscal year.

Section 204. That corporations exempt from tax under the provisions of section eleven of Title I of the Act approved September eighth, nineteen hundred and sixteen, and partnerships carrying on or doing the same business shall be exempt from the provisions of this title, and the tax imposed by this title shall not attach to incomes of partnerships derived from agriculture or from personal services.

Section 205. That every corporation having a net income of \$5,000 or more for the taxable year making a return under Title I of such Act of September eighth, nineteen hundred and sixteen, shall for the purposes of this title include in such return a detailed statement of the actual capital invested.

Every partnership having a net income of \$5,000 or more for the taxable year shall render a correct return of the income of the partnership for the taxable year, setting forth specifically the actual capital invested and the gross income for such year and the deductions hereinafter allowed. Such returns shall be rendered at the same time and

three hundred and three, in addition to the tax now imposed by law, a tax of \$1.10 (or, if withdrawn for beverage purposes or for use in the manufacture or production of any article used or intended for use as a beverage, a tax of \$2.10) on each proof gallon, or wine gallon when below proof, and a proportionate tax at a like rate on all fractional parts of such proof or wine gallon, to be paid by the distiller or importer when withdrawn, and collected under the provisions of existing law.

Perfumes

That in addition to the tax under existing law there shall be levied and collected upon all perfumes hereafter imported into the United States containing distilled spirits, a tax of \$1.10 per wine gallon, and a proportionate tax at a like rate on all

in the same manner and form as is prescribed for income-tax returns under Title I of such Act of September eighth, nineteen hundred and sixteen. In computing net income of a partnership for the purposes of this title there shall be allowed like deductions as are allowed to individuals in sections five (a) and six (a) of such Act of September eighth, nineteen hundred and sixteen.

Section 206. That all administrative, special, and general provisions of law, including the laws in relation to the assessment, remission, collection, and refund of internal revenue taxes not heretofore specifically repealed and not inconsistent with the provisions of this title are hereby extended and made applicable to all the provisions of this title and to the tax herein imposed, and all provisions of Title I of such Act of September eighth, nineteen hundred and sixteen, relating to returns and payment of the tax therein imposed, including penalties, are hereby made applicable to the tax required by this title.

Section 207. That the Commissioner of Internal Revenue, with the approval of the Secretary of the Treasury, shall make all necessary regulations for carrying out the provisions of this title, and may require any corporation or partnership subject to the provisions of this title to furnish him with such facts, data, and information as in his judgment are necessary to collect the tax provided for in this title.

Section 301. (1) That every person manufacturing (a) gunpowder and other explosives, excepting blasting powder and dynamite used for industrial purposes; (b) cartridges, loaded and unloaded caps or primers, exclusive of those used for industrial purposes; (c) projectiles, shells, or torpedoes of any kind, including shrapnels, loaded or unloaded, or fuses, or complete rounds of ammunition; (d) fire-arms, of any kind and appendages, including small arms, cannon, machine guns, rifles and bayonets; (e) electric motor boats, submarines or submersible vessels or boats; or (f) any part of any of the articles mentioned in (b), (c), (d), or (e); shall pay for each taxable year, in addition to the income tax imposed by Title I, an excise tax of twelve and one-half per centum upon the entire net profits actually received or accrued for said year from the sale or disposition of such articles manufactured within the United States: Provided, however, That no person shall pay such tax upon net profits received during the year nineteen hundred and sixteen derived from the sale and delivery of the articles enumerated in this section under contracts executed and fully performed by such person prior to January first, nineteen hundred and sixteen.

fractional parts of such wine gallon. Such tax shall be collected by the collector of customs and deposited as internal revenue collections, under such rules and regulations as the Commissioner of Internal Revenue, with the approval of the Secretary of the Treasury, may prescribe.

Importation of Spirits Prohibited

Section 301. That no distilled spirits produced after the passage of this Act shall be imported into the United States from any foreign country, or from the West Indian Islands recently acquired from Denmark (unless produced from products the growth of such islands, and not then into any State or Territory or District of the United States in which the manufacture or sale of intoxicating liquor is prohibited), or from Porto Rico, or the Philippine Islands. Under such rules, regulations, and bonds as the Secretary of the Treasury may prescribe, the provisions of this section shall not apply to distilled spirits imported for other than (1) beverage purpose or (2) use in the manufacture or production of any article used or intended for use as a beverage.

Regulation as to Transfer, Gauging, Storing, Etc., of Spirits

Section 302. That at registered distilleries producing alcohol, or other high-proof spirits, packages may be filled with such spirits reduced to not less than one hundred proof from the receiving cisterns and tax paid without being entered into bonded warehouse. Such spirits may be also transferred from the receiving cisterns at such distilleries, by means of pipe lines, direct to storage tanks in the bonded warehouse and may be warehoused in such storage tanks. Such spirits may be also transferred in tanks, or tank cars to general bonded warehouses for storage therein, either in storage tanks in such warehouses or in the tanks in which they were transferred. Such spirits may also be transferred after tax payment from receiving cisterns or warehouse storage tanks to tanks or tank cars and may be transferred in such tanks or tank cars to the premises of rectifiers of spirits. The Commissioner of Internal Revenue, with the approval of the Secretary of the Treasury, is hereby empowered to prescribe all necessary regulations relating to the drawing off, transferring, gauging, storing and transportation of such spirits; the records to be kept and returns to be made; the size and kind of packages and tanks to be used; the marking, branding, numbering and stamping of such packages and tanks; the kinds of stamps, if any, to be used; and the time and manner of paying

the tax; the kind of bond and the penal sum of same. The tax prescribed by law must be paid before such spirits are removed from the distillery premises, or from general bonded warehouse in the case of spirits transferred thereto, except as otherwise provided by law.

Under such regulations as the Commissioner of Internal Revenue, with the approval of the Secretary of the Treasury, may prescribe, distilled spirits may hereafter be drawn from receiving cisterns and deposited in distillery warehouses without having affixed to the packages containing the same distillery warehouse stamps, and such packages, when so deposited in warehouse, may be withdrawn therefrom on the original gauge where the same have remained in such warehouse for a period not exceeding thirty days from the date of deposit.

Regulations as to Spirits for Non-Beverage Purposes

Under such regulations as the Commissioner of Internal Revenue, with the approval of the Secretary of the Treasury, may prescribe, the manufacture, warehousing, withdrawal, and shipment, under the provisions of existing law, of ethyl alcohol for other than (1) beverage purposes or (2) use in the manufacture or production of any article used or intended for use as a beverage, and denatured alcohol, may be exempted from the provisions of section thirty-two hundred and eighty-three, Revised Statutes of the United States.

Under such regulations as the Commissioner of Internal Revenue, with the approval of the Secretary of the Treasury, may prescribe, manufacturers of ethyl alcohol for other than beverage purposes may be granted permission under the provisions of section thirty-two hundred and eighty-five, Revised Statutes of the United States, to fill fermenting tub in a sweet-mash distillery not oftener than once in forty-eight hours:

Tax on Stock on Hand

Section 303. That upon all distilled spirits produced in or imported into the United States upon which the Tax now imposed by law has been paid, and which, on the day this Act is passed, are held by a retailer in a quantity in excess of fifty gallons in the aggregate, or by any other person, corporation, partnership, or association in any quantity, and which are intended for sale, there shall be levied, assessed, collected, and paid a tax of \$1.10 (or, if intended for sale for beverage purposes or for use in the manufacture or production of any article used or intended for use as a beverage, a tax of \$2.10) on each proof gallon, and a proportionate tax at a like rate on all fractional parts of such proof gallon: Provided, That the tax on such distilled spirits in the custody of a court of bankruptcy in insolvency proceedings on June first, nineteen hundred and seventeen, shall be paid by the person to whom the court delivers

such distilled spirits at the time of such delivery, to the extent that the amount thus delivered exceeds the fifty gallons hereinbefore provided.

Tax on Rectified or Unlawfully Refined Spirits to Reduce Proof After Rectification

Section 304. That in addition to the tax now imposed or imposed by this Act on distilled spirits there shall be levied, assessed, collected, and paid a tax of 15 cents on each proof gallon and a proportionate tax at a like rate on all fractional parts of such proof gallon on all distilled spirits or wines hereafter rectified, purified, or refined in such manner, and on all mixtures hereafter produced in such manner, that the person so rectifying, purifying, refining, or mixing the same is a rectifier within the meaning of section thirty-two hundred and forty-four, Revised Statutes, as amended, and on all such articles in the possession of the rectifier on the day this Act is passed: Provided, That this tax shall not apply to gin produced by the redistillation of a pure spirit over juniper berries and other aromatics.

When the process of rectification is completed and the tax prescribed by this section has been paid, it shall be unlawful for the rectifier or other dealer to reduce in proof or increase in volume such spirits or wine by the addition of water or other substance; nothing herein contained shall, however, prevent a rectifier from using again in the process of rectification spirits already rectified and upon which the tax has theretofore been paid.

Exemptions

The tax imposed by this section shall not attach to cordials or liqueurs on which a tax is imposed and paid under the Act entitled "An Act to increase the revenue, and for other purposes," approved September eighth, nineteen hundred and sixteen, nor to the mixing and blending of wines, where such blending is for the sole purpose of perfecting such wines, according to commercial standards, nor to blends made exclusively of two or more pure straight whiskies aged in wood for a period not less than four years and without the addition of coloring or flavoring matter or any other substance than pure water and if not reduced below ninety proof: Provided, That such blended whiskies shall be exempt from tax under this section only when compounded under the immediate supervision of a revenue officer, in such tanks and under such conditions and supervision as the Commissioner of Internal Revenue, with the approval of the Secretary of the Treasury, may prescribe.

General Provisions

All distilled spirits taxable under this section shall be subject to uniform regulations concerning the use thereof in the manufacture, blending, compounding, mixing, marking, brand-

ing, and sale of whisky and rectified spirits, and no discrimination whatsoever shall be made by reason of a difference in the character of the material from which same may have been produced.

The business of a rectifier of spirits shall be carried on, and the tax on rectified spirits shall be paid, under such rules, regulations, and bonds as may be prescribed by the Commissioner of Internal Revenue, with the approval of the Secretary of the Treasury.

Penalty

Any person violating any of the provisions of this section shall be deemed to be guilty of a misdemeanor and, upon conviction, shall be fined not more than \$1,000 or imprisoned not more than two years. He shall, in addition, be liable to double the tax evaded together with the tax, to be collected by assessment or on any bond given.

Stamp Provisions

Section 305. That hereafter collectors of internal revenue shall not furnish wholesale liquor dealer's stamps in lieu of and in exchange for stamps for rectified spirits unless the package covered by stamp for rectified spirits is to be broken into smaller packages.

The Commissioner of Internal Revenue, with the approval of the Secretary of the Treasury, is authorized to discontinue the use of the following stamps whenever in his judgment the interests of the Government will be subserved thereby:

Distillery warehouse, special bonded warehouse, special bonded rewarehouse, general bonded warehouse, general bonded retransfer, transfer brandy, export tobacco, export cigars, export oleomargarine and export fermented liquor stamps.

Installation of Meters

Section 306. That the Commissioner of Internal Revenue, with the approval of the Secretary of the Treasury, is hereby authorized to require at distilleries, breweries, rectifying houses, and wherever else in his judgment such action may be deemed advisable, the installation of meters, tanks, pipes, or any other apparatus for the purpose of protecting the revenue, and such meters, tanks, and pipes and all necessary labor incident thereto shall be at the expense of the person, corporation, partnership, or association on whose premises the installation is required. Any such person, corporation, partnership, or association refusing or neglecting to install such apparatus when so required by the commissioner shall not be permitted to conduct business on such premises.

Tax on Beer, Ale, Porter, Etc.

Section 307. That on and after the passage of this Act there shall be levied and collected on all beer, lager beer, ale, porter, and other similiar fermented liquor, containing one-half per centum or more of alcohol, brewed or manufactured and sold, or stored in warehouse, or removed for consumption or sale, within the United States, by whatever name such liquors may be called, in addition to the tax now imposed by law, a tax of \$1.50 for every barrel containing not more than thirty-one gallons, and at a like rate for any other quantity or for the fractional parts of a barrel authorized and defined by law.

Removal of Liquors

Section 308. That from and after the passage of this Act taxable fermented liquors may be conveyed without payment of tax from the brewery premises where produced to a contiguous industrial distillery of either class established under the Act of October third, nineteen hundred and thirteen, to be used as distilling material, and the residue from such distillation, containing less than one-half of one per centum of alcohol by volume, which is to be used in making beverages, may be manipulated by cooling, flavoring, carbonating, settling, and filtering on the distillery premises or elsewhere.

Removal of Liquors

The removal of the taxable fermented liquor from the brewery to the distillery and the operation of the distillery and removal of the residue therefrom shall be under the supervision of such officer or officers as the Commissioner of Internal Revenue shall deem proper, and the Commissioner of Internal Revenue, with the approval of the Secretary of the Treasury, is hereby authorized to make such regulations from time to time as may be necessary to give force and effect to this section and to safeguard the revenue.

Tax on Wines, Vermuth, Cordials, Etc.

Section 309. That upon all still wines, including vermuth, and upon all champagne and other sparkling wines, liqueurs, cordials, artificial or imitation wines or compounds sold as wine, produced in or imported into the United States, and hereafter removed from the custom-house, place of manufacture, or from bonded premises for sale or consumption, there shall be levied and collected, in addition to the tax now imposed by law upon such articles, a tax equal to such tax, to be levied, collected, and paid under the provisions of existing law.

Excessive Stock Tax

Section 310. That upon all articles specified in section three hundred and nine upon which the tax now imposed by law has been paid and which are on the day this Act is passed held

in excess of twenty-five gallons in the aggregate of such articles and intended for sale, there shall be levied, collected, and paid a tax equal to the tax imposed by such section.

Tax on Brandy and Wine Spirits

Section 311. That upon all grape brandy or wine spirits withdrawn by a producer of wines from any fruit distillery or special bonded warehouse under subdivision (c) of section four hundred and two of the Act entitled "An Act to increase the revenue and for other purposes," approved September eighth, nineteen hundred and sixteen:¹

there shall be levied, assessed, collected, and paid in addition to the tax therein imposed, a tax equal to double such tax, to be assessed, collected, and paid under the provisions of existing law.

Tax on Brandy and Wine Used for Fortification

Section 312. That upon all sweet wines held for sale by the producer thereof upon the day this Act is passed there shall be levied, assessed, collected, and paid an additional tax equivalent to 10 cents per proof gallon upon the grape brandy or wine spirits used in the fortification of such wine, and an additional tax of 20 cents per proof gallon shall be levied, assessed, collected, and paid upon all grape brandy or wine spirits withdrawn by a producer of sweet wines for the purpose of fortifying such wines and not so used prior to the passage of this Act.

Tax on Sirups and Extracts

Section 313. That there shall be levied, assessed, collected, and paid—

(a) Upon all prepared sirups or extracts (intended for use in the manufacture or production of beverages, commonly known as soft drinks, by soda fountains, bottling establishments, and other similar places) sold by the manufacturer, producer, or importer thereof, if so sold for not more than \$1.30 per gallon,

¹(ACT OF SEPTEMBER 8th, 1916) Section 402 (c) That under such regulations and official supervision and upon the giving of such notices, entries, bonds, and other security as the Commissioner of Internal Revenue, with the approval of the Secretary of the Treasury, may prescribe, any producer of wines defined under the provisions of this section or section four hundred and one of this Act, may withdraw from any fruit distillery or special bonded warehouse grape brandy, or wine spirits, for the fortification of such wines on the premises where actually made: Provided, That there shall be levied and assessed against the producer of such wines a tax of 10 cents per proof gallon of grape brandy or wine spirits so used by him in the fortification of such wines during the preceding month, which assessment shall be paid by him within six months from the date of notice thereof: Provided further, That nothing herein contained shall be construed as exempting any wines, cordials, liqueurs, or similar compounds from the payment of any tax provided for in this section.

a tax of 5 cents per gallon; if so sold for more than \$1.30 and not more than \$2 per gallon, a tax of 8 cents per gallon; if so sold for more than \$2 and not more than \$3 per gallon, a tax of 10 cents per gallon; if so sold for more than \$3 and not more than \$4 per gallon, a tax of 15 cents per gallon; and if so sold for more than \$4 per gallon, a tax of 20 cents per gallon; and

Tax on Soft Drinks

(b) Upon all unfermented grape juice, soft drinks, or artificial mineral waters (not carbonated), and fermented liquors containing less than one-half per centum of alcohol, sold by the manufacturer, producer, or importer thereof, in bottles or other closed containers, and upon all ginger ale, root beer, sarsaparilla, pop, and other carbonated waters or beverages, manufactured and sold by the manufacturer, producer, or importer of the carbonic acid gas used in carbonating the same, a tax of 1 cent per gallon; and

Tax on Mineral Waters

(c) Upon all natural mineral waters or table waters, sold by the producer, bottler, or importer thereof, in bottles or other closed containers, at over 10 cents per gallon, a tax of 1 cent per gallon.

Monthly Returns

Section 314. That each manufacturer, producer, bottler, or importer shall make monthly returns under oath to the collector of internal revenue for the district in which is located the principal place of business, containing such information necessary for the assessment of the tax, and at such times and in such manner, as the Commissioner of Internal Revenue, with the approval of the Secretary of the Treasury, may by regulation prescribe.

Tax on Carbonic Acid

Section 315. That upon all carbonic acid gas in drums or other containers (intended for use in the manufacture or production of carbonated water or other drinks) sold by the manufacturer, producer, or importer thereof, there shall be levied, assessed, collected, and paid a tax of 5 cents per pound. Such tax shall be paid by the purchaser to the vendor thereof and shall be collected, returned, and paid to the United States by such vendor in the same manner as provided in section five hundred and three.

TITLE IV. WAR TAX ON CIGARS, TOBACCO AND MANUFACTURES THEREOF

Cigars and Cigarettes

Section 400. That upon cigars and cigarettes, which shall be manufactured and sold, or removed for consumption or sale, there shall be levied and collected, in addition to the taxes now

imposed by existing law, the following taxes, to be paid by the manufacturer or importer thereof; (a) on cigars of all descriptions made of tobacco, or any substitute therefor, and weighing not more than three pounds per thousand, 25 cents per thousand; (b) on cigars made of tobacco, or any substitute therefor, and weighing more than three pounds per thousand, if manufactured or imported to retail at 4 cents or more each, and not more than 7 cents each, \$1 per thousand; (c) if manufactured or imported to retail at more than 7 cents each and not more than 15 cents each, \$3 per thousand; (d) if manufactured or imported to retail at more than 15 cents each and not more than 20 cents each, \$5 per thousand; (e) if manufactured or imported to retail at more than 20 cents each, \$7 per thousand: Provided, That the word "retail" as used in this section shall mean the ordinary retail price of a single cigar, and that the Commissioner of Internal Revenue may, by regulation, require the manufacturer or importer to affix to each box or container a conspicuous label indicating by letter the clause of this section under which the cigars therein contained have been tax-paid, which must correspond with the tax-paid stamp on said box or container; (f) on cigarettes made of tobacco, or any substitute therefor, made in or imported into the United States, and weighing not more than three pounds per thousand, 80 cents per thousand; weighing more than three pounds per thousand, \$1.20 per thousand.

Regulations as to Packing and Cancellation of Stamps

Every manufacturer of cigarettes (including small cigars weighing not more than three pounds per thousand) shall put up all the cigarettes and such small cigars that he manufactures or has manufactured for him, and sells or removes for consumption or use, in packages or parcels containing five, eight, ten, twelve, fifteen, sixteen, twenty, twenty-four, forty, fifty, eighty, or one hundred cigarettes each, and shall securely affix to each of said packages or parcels a suitable stamp denoting the tax thereon and shall properly cancel the same prior to such sale or removal for consumption or use under such regulations as the Commissioner of Internal Revenue, with the approval of the Secretary of the Treasury, shall prescribe; and all cigarettes imported from a foreign country shall be packed, stamped, and the stamps cancelled in a like manner, in addition to the import stamp indicating inspection of the custom-house before they are withdrawn therefrom.

Tobacco and Snuff

Section 401. That upon all tobacco, and snuff hereafter manufactured and sold, or removed for consumption or use, there shall be levied and collected, in addition to the tax now imposed by law upon such articles, a tax of 5 cents per pound, to be levied, collected, and paid under the provisions of existing law.

In addition to the packages provided for under existing law, manufactured tobacco and snuff may be put up and prepared by

the manufacturer for sale or consumption, in packages of the following description: Packages containing one-eighth, three-eighths, five-eighths, seven-eighths, one and one-eighth, one and three-eighths, one and five-eighths, one and seven-eighths, and five ounces.

Sections 400-1 Effective Nov. 2, 1917

Section 402. That sections four hundred, four hundred and one, and four hundred and four, shall take effect thirty days after the passage of this Act: Provided, That after the passage of this Act and before the expiration of the aforesaid thirty days, cigarettes and manufactured tobacco and snuff may be put up in the packages now provided for by law or in the packages provided for in sections four hundred and four hundred and one.

Floor Stock Tax

Section 403. That there shall also be levied and collected, upon all manufactured tobacco and snuff in excess of one hundred pounds or upon cigars or cigarettes in excess of one thousand, which were manufactured or imported, and removed from factory or custom house prior to the passage of this Act, bearing tax-paid stamps affixed to such articles for the payment of the taxes thereon, and which are, on the day after this Act is passed, held and intended for sale by any person, corporation, partnership, or association, and upon all manufactured tobacco, snuff, cigars, or cigarettes, removed from factory or custom house after the passage of this Act but prior to the time when the tax imposed by section four hundred or section four hundred and one upon such articles takes effect, an additional tax equal to one-half the tax imposed by such sections upon such articles.

Cigarette Paper

Section 404. That there shall be levied, assessed, and collected upon cigarette paper made up into packages, books, sets, or tubes, made up in or imported into the United States and intended for use by the smoker in making cigarettes the following taxes: On each package, book, or set, containing more than twenty-five but not more than fifty papers, one-half of 1 cent; containing more than fifty but not more than one hundred papers, 1 cent; containing more than one hundred papers, 1 cent for each one hundred papers or fractional part thereof; and upon tubes, 2 cents for each one hundred tubes or fractional part thereof.

TITLE V. WAR TAX ON FACILITIES FURNISHED BY PUBLIC UTILITIES, AND INSURANCE

Rail or Water Freight Transportation Tax

Section 500. That from and after the first day of November, nineteen hundred and seventeen, there shall be levied, assessed, collected, and paid (a) a tax equivalent to three per centum

of the amount paid for the transportation by rail or water or by any form of mechanical motor power when in competition with carriers by rail or water of property by freight consigned from one point in the United States to another;

Tax on Express Transportation

(b) a tax of 1 cent for each 20 cents, or fraction thereof, paid to any person, corporation, partnership, or association, engaged in the business of transporting parcels or packages by express over regular routes between fixed terminals, for the transportation of any package, parcel, or shipment by express from one point in the United States to another: Provided, That nothing herein contained shall be construed to require the carrier collecting such tax to list separately in any bill of lading, freight receipt, or other similar document, the amount of the tax herein levied, if the total amount of the freight and tax be therein stated;

Tax on Transportation of Persons by Rail or Water

(c) a tax equivalent to eight per centum of the amount paid for the transportation of persons by rail or water, or by any form of mechanical motor power on a regular established line when in competition with carriers by rail or water, from one point in the United States to another or in any point in Canada or Mexico, where the ticket therefor is sold or issued in the United States, not including the amount paid for computation or season tickets for trips less than thirty miles, or for transportation the fare for which does not exceed 35 cents, and a tax equivalent to ten per centum of the amount paid for seats, berths, and state-rooms in parlor cars, sleeping cars, or on vessels. If a mileage book used for such transportation or accommodation has been purchased before this section takes effect, or if cash fare be paid, the tax imposed by this section shall be collected from the person presenting the mileage book, or paying the cash fare, by the conductor or other agent, when presented for such transportation or accommodation, and the amount so collected shall be paid to the United States in such manner and at such times as the Commissioner of Internal Revenue, with the approval of the Secretary of the Treasury, may prescribe; if a ticket (other than a mileage book) is bought and partially used before this section goes into effect it shall not be taxed, but if bought but not so used before this section takes effect, it shall not be valid for passage until the tax has been paid and such payment evidenced on the ticket in such manner as the Commissioner of Internal Revenue, with the approval of the Secretary of the Treasury, may by regulation prescribe;

Tax on Telephone, Telegraph or Radio Communications and Pipe Line Transportation

(d) a tax equivalent to five per centum of the amount paid for the transportation of oil by pipe line; (e) a tax of 5 cents upon each telegraph, telephone, or radio, dispatch, message, or conversation, which originates within the United States, and for the transmission of which a charge of 15 cents or more is imposed: Provided, That only one payment of such tax shall be required, notwithstanding the lines or stations of one or more persons, corporations, partnerships, or associations, shall be used for the transmission of such dispatch, message, or conversation.

Payor for Services to Pay Said Taxes

Section 501. That the taxes imposed by section five hundred shall be paid by the person, corporation, partnership, or association paying for the services or facilities rendered.

Tax on Transportation of Carriers' Own Commodities

In case such carrier does not, because of its ownership of the commodity transported, or for any other reason, receive the amount which as a carrier it would otherwise charge, such carrier shall pay a tax equivalent to the tax which would be imposed upon the transportation of such commodity if the carrier received payment for such transportation: Provided, That in case of a carrier which on May first, nineteen hundred and seventeen, had no rates or tariff on file with the proper Federal or State authority, the tax shall be computed on the basis of the rates or tariffs of other carriers for like services as ascertained and determined by the Commissioner of Internal Revenue: Provided further, That nothing in this or the preceding section shall be construed as imposing a tax (a) upon the transportation of any commodity which is necessary for the use of the carrier in the conduct of its business as such and is intended to be so used or has been so used; or (b) upon the transportation of company material transported by one carrier, which constitutes a part of a railroad system, for another carrier which is also a part of the same system.

Exemptions

Section 502. That no tax shall be imposed under section five hundred upon any payment received for services rendered to the United States, or any State, Territory, or the District of Columbia. The right to exemption under this section shall be evidenced in such manner as the Commissioner of Internal Revenue, with the approval of the Secretary of the Treasury, may by regulation prescribe.

Collections and Returns

Section 503. That each person, corporation, partnership, or association receiving any payments referred to in section five hundred shall collect the amount of the tax, if any, imposed by

such section from the person, corporation, partnership, or association making such payments, and shall make monthly returns under oath, in duplicate, and pay the taxes so collected and the taxes imposed upon it under paragraph two of section five hundred and one to the collector of internal revenue of the district in which the principal office or place of business is located. Such returns shall contain such information, and be made in such manner, as the Commissioner of Internal Revenue, with the approval of the Secretary of the Treasury, may by regulation prescribe.

Tax on Issuance of Insurance Policies

Section 504. That from and after the first day of November, nineteen hundred and seventeen, there shall be levied, assessed, collected, and paid the following taxes on the issuance of insurance policies:

Life Insurance

(a) Life Insurance: A tax equivalent to 8 cents on each \$100 or fractional part thereof of the amount for which any life is insured under any policy of insurance, or other instrument, by whatever name the same is called: Provided, That on all policies for life insurance only by which a life is insured not in excess of \$500, issued on the industrial or weekly-payment plan of insurance, the tax shall be forty per centum of the amount of the first weekly premium: Provided further, That policies of reinsurance shall be exempt from the tax imposed by this subdivision;

Marine, Fire and Inland Insurance

(b) Marine, inland, and fire insurance: A tax equivalent to 1 cent on each dollar or fractional part thereof of the premium charged under each policy of insurance or other instrument by whatever name the same is called whereby insurance is made or renewed upon property of any description (including rents or profits), whether against peril by sea or inland waters, or by fire or lightning, or other peril: Provided, That policies of reinsurance shall be exempt from the tax imposed by this subdivision;

Casualty Insurance

(c) Casualty insurance: A tax equivalent to 1 cent on each dollar or fractional part thereof of the premium charged under each policy of insurance or obligation of the nature of indemnity for loss, damage or liability (except bonds taxable under subdivision two of schedule A of Title VIII) issued or executed or renewed by any person, corporation, partnership, or association, transacting the business of employer's liability, workmen's compensation, accident, health, tornado, plate glass, steam boiler, elevator, burglary, automatic sprinkler, automobile, or other branch of insurance (except life insurance, and insurance described and taxed in the preceding subdivision): Provided, That policies of

reinsurance shall be exempt from the tax imposed by this subdivision;

Exemptions

(d) Policies issued by any person, corporation, partnership, or association, whose income is exempt from taxation under Title I of the Act entitled "An Act to increase the revenue, and for other purposes," approved September eighth, nineteen hundred and sixteen,¹ shall be exempt from the taxes imposed by this section.

Return Regulations

Section 505. That every person, corporation, partnership, or association, issuing policies of insurance upon the issuance of which a tax is imposed by section five hundred and four, shall, within the first fifteen days of each month, make a return under oath, in duplicate and pay such tax to the collector of internal revenue of the district in which the principal office or place of business of such person, corporation, partnership, or association is located. Such returns shall contain such information and be made in such manner as the Commissioner of Internal Revenue, with the approval of the Secretary of the Treasury, may by regulation prescribe.

TITLE VI. WAR EXCISE TAXES

Automobiles Sold by Manufacturer or Importer

Section 600. That there shall be levied, assessed, collected, and paid—

(a) Upon all automobiles, automobile trucks, automobile wagons, and motorcycles, sold by the manufacturer, producer, or importer, a tax equivalent to three per centum of the price for which so sold;

¹(ACT OF SEPTEMBER 8th, 1916) **Section 4.** The following income shall be exempt from the provisions of this title:

The proceeds of life insurance policies paid to individual beneficiaries upon the death of the insured; the amount received by the insured, as a return of premium or premiums paid by him under life insurance, endowment, or annuity contracts, either during the term or at the maturity of the term mentioned in the contract or upon the surrender of the contract; the value of property acquired by gift, bequest, devise, or descent (but the income from such property shall be included as income); interest upon the obligations of a State or any political subdivision thereof or upon the obligations of the United States or its possessions or securities issued under the provisions of the Federal farm loan Act of July seventeenth, nineteen hundred and sixteen; the compensation of the present President of the United States during the term for which he has been elected, and the judges of the Supreme and inferior courts of the United States now in office, and the compensation of all officers and employees of a State, or any political subdivision thereof, except when such compensation is paid by the United States Government.

Musical Instruments and Machines

(b) Upon all piano players, graphophones, phonographs, talking machines, and records used in connection with any musical instrument, piano player, graphophone, phonograph, or talking machine, sold by the manufacturer, producer, or importer, a tax equivalent to three per centum of the price for which so sold;

Moving Picture Films

(c) Upon all moving-picture films (which have not been exposed) sold by the manufacturer or importer a tax equivalent to one-fourth of 1 cent per linear foot; and

(d) Upon all positive moving-picture films (containing a picture ready for projection) sold or leased by the manufacturer, producer, or importer, a tax equivalent to one-half of 1 cent per linear foot; and

Jewelry

(e) Upon any article commonly or commercially known as jewelry, whether real or imitation, sold by the manufacturer, producer, or importer thereof, a tax equivalent to three per centum of the price for which so sold; and

Sporting Goods, Etc.

(f) Upon all tennis rackets, golf clubs, baseball bats, lacrosse sticks, balls of all kinds, including baseballs, footballs, tennis, golf, lacrosse, billiard and pool balls, fishing rods and reels, billiard and pool tables, chess and checker boards and pieces, dice, games and parts of games, except playing cards and children's toys and games, sold by the manufacturer, producer, or importer, a tax equivalent to three per centum of the price for which so sold; and

Toilet Articles

(g) Upon all perfumes, essences, extracts, toilet waters, cosmetics, petroleum jellies, hair oils, pomades, hair dressings, hair restoratives, hair dyes, tooth and mouth washes, dentifrices, tooth pastes, aromatic cachous, toilet soaps and powders, or any similar substance, article, or preparation by whatsoever name known or distinguished, upon all of the above which are used or applied or intended to be used or applied for toilet purposes, and which are sold by the manufacturer, importer, or producer, a tax equivalent to two per centum of the price for which so sold; and

Drugs, Patent Medicines and Preparations, Etc.

(h) Upon all pills, tablets, powders, tinctures, troches or lozenges, sirups, medicinal cordials or bitters, anodynes, tonics, plasters, liniments, salves, ointments, pastes, drops, waters (except those taxed under section three hundred and thirteen of this Act), essences, spirits, oils, and all medicinal preparations, compounds, or compositions whatsoever, the manufacturer or pro-

ducer of which claims to have any private formula, secret, or occult art for making or preparing the same, or has or claims to have any exclusive right or title to the making or preparing the same, or which are prepared, uttered, vended, or exposed for sale under any letters patent, or trade-mark, or which, if prepared by any formula, published or unpublished, are held out or recommended to the public by the makers, venders, or proprietors thereof as proprietary medicines or medicinal proprietary articles or preparations, or as remedies or specifics for any disease, diseases, or affection whatever affecting the human or animal body, and which are sold by the manufacturer, producer, or importer, a tax equivalent to two per centum of the price for which so sold; and

Chewing Gum

(i) Upon all chewing gum or substitute therefor sold by the manufacturer, producer, or importer, a tax equivalent to two per centum of the price for which so sold; and

Cameras

(j) Upon all cameras sold by the manufacturer, producer, or importer, a tax equivalent to three per centum of the price for which so sold.

Returns

Section 601. That each manufacturer, producer, or importer of any of the articles enumerated in section six hundred shall make monthly returns under oath in duplicate and pay the taxes imposed on such articles by this title to the collector of internal revenue for the district in which is located the principal place of business. Such returns shall contain such information and be made at such times and in such manner as the Commissioner of Internal Revenue, with the approval of the Secretary of the Treasury, may by regulations prescribe.

Stock on Hand

Section 602. That upon all articles enumerated in subdivisions (a), (b), (c), (f), (g), (h), (i), or (j) of section six hundred, which on the day this Act is passed are held and intended for sale by any person, corporation, partnership, or association, other than (1) a retailer who is not also a wholesaler, or (2) the manufacturer, producer, or importer thereof, there shall be levied, assessed, collected, and paid a tax equivalent to one-half the tax imposed by each such subdivision upon the sale of the articles therein enumerated. This tax shall be paid by the person, corporation, partnership, or association so holding such articles.

The taxes imposed by this section shall be assessed, collected, and paid in the same manner as provided in section ten hundred and two in the case of additional taxes upon articles upon which the tax imposed by existing law has been paid.

Nothing in this section shall be construed to impose a tax

upon articles sold and delivered prior to May ninth, nineteen hundred and seventeen, where the title is reserved in the vendor as security for the payment of the purchase money.

Boats, Yachts, Etc.

Section 603. That on the day this Act takes effect, and thereafter on July first in each year, and also at the time of the original purchase of a new boat by a user, if on any other date than July first, there shall be levied, assessed, collected, and paid upon the use of yachts, pleasure boats, power boats, and sailing boats, of over five net tons, and motor boats with fixed engines, not used exclusively for trade or national defense, or not built according to plans and specifications approved by the Navy Department, an excise tax to be based on each yacht or boat, at rates as follows: Yachts, pleasure boats, power boats, motor boats with fixed engines, and sailing boats, of over five net tons, length not over fifty feet, 50 cents for each foot, length over fifty feet and not over one hundred feet, \$1 for each foot, length over one hundred feet, \$2 for each foot; motor boats of not over five net tons with fixed engines, \$5.

In determining the length of such yachts, pleasure boats, power boats, motor boats with fixed engines, and sailing boats, the measurement of over-all length shall govern.

In the case of a tax imposed at the time of the original purchase of a new boat on any other date than July first, the amount to be paid shall be the same number of twelfths of the amount of the tax as the number of calendar months, including the month of sale, remaining prior to the following July first.

TITLE VII. WAR TAX ON ADMISSIONS AND DUES

Admission Tax

Section 700. That from and after the first day of November, nineteen hundred and seventeen, there shall be levied, assessed, collected, and paid (a) a tax of 1 cent for each 10 cents or fraction thereof of the amount paid for admission to any place, including admission by season ticket or subscription, to be paid by the person paying for such admission: Provided, That the tax on admission of children under twelve years of age where an admission charge for such children is made shall in every case be 1 cent; and (b) in the case of persons (except bona fide employees, municipal officers on official business, and children under twelve years of age) admitted free to any place at a time when and under circumstances under which an admission charge is made to other persons of the same class, a tax of 1 cent for each 10 cents or fraction thereof of the price so charged to such other persons for the same or similar accommodations, to be paid by the person so admitted; and (c) a tax of 1 cent for each 10 cents or fraction thereof paid for admission to any public performance for profit at any cabaret or other similar entertainment to which

the charge for admission is wholly or in part included in the price paid for refreshment, service, or merchandise; the amount paid for such admission to be computed under rules prescribed by the Commissioner of Internal Revenue, with the approval of the Secretary of the Treasury, such tax to be paid by the person paying for such refreshment, service, or merchandise. In the case of persons having the permanent use of boxes or seats in an opera house or any place of amusement or a lease for the use of such box or seat in such opera house or place of amusement there shall be levied, assessed, collected, and paid a tax equivalent to ten per centum of the amount for which a similar box or seat is sold for performance or exhibition at which the box or seat is used or reserved by or for the lessee or holder. These taxes shall not be imposed in the case of a place the maximum charge for admission to which is 5 cents, or in the case of shows, rides, and other amusements (the maximum charge for admission to which is 10 cents), within outdoor general amusement parks, or in the case of admissions to such parks.

No tax shall be levied under this title in respect to any admissions all the proceeds of which inure exclusively to the benefit of religious, educational, or charitable institutions, societies, or organizations, or admissions to agricultural fairs none of the profits of which are distributed to stockholders or members of the association conducting the same.

Admission Defined

The term "admission" as used in this title includes seats and tables, reserved or otherwise, and other similar accommodations, and the charges made therefor.

Tax on Club Dues and Fees

Section 701. That from and after the first day of November, nineteen hundred and seventeen, there shall be levied, assessed, collected, and paid, a tax equivalent to ten per centum of any amount paid as dues or membership fees (including initiation fees), to any social, athletic, or sporting club or organization, where such dues or fees are in excess of \$12 per year; such taxes to be paid by the person paying such dues or fees: Provided, That there shall be exempted from the provisions of this section all amounts paid as dues or fees to a fraternal beneficiary society, order, or association, operating under the lodge system or for the exclusive benefit of the members of a fraternity itself operating under the lodge system, and providing for the payment of life, sick, accident, or other benefits to the members of such society, order, or association or their dependents.

Returns

Section 702. That every person, corporation, partnership, or association (a) receiving any payments for such admission, dues, or fees shall collect the amount of the tax imposed by section

seven hundred or seven hundred and one from the person making such payments, or (b) admitting any person free to any place for admission to which a charge is made shall collect the amount of the tax imposed by section seven hundred from the person so admitted; and (c) in either case shall make returns and payments of the amount so collected, at the same time and in the same manner as provided in section five hundred and three of this Act.

TITLE VIII. WAR STAMP TAXES

Bonds, Debentures, Etc.

Section 800. That on and after the first day of December, nineteen hundred and seventeen, there shall be levied, collected, and paid, for and in respect of the several bonds, debentures, or certificates of stock and of indebtedness, and other documents, instruments, matters, and things mentioned and described in Schedule A of this title, or for or in respect of the vellum, parchment, or paper upon which such instruments, matters, or things, or any of them, are written or printed, by any person, corporation, partnership, or association who makes, signs, issues, sells, removes, consigns, or ships the same, or for whose use or benefit the same are made, signed, issued, sold, removed, consigned, or shipped, the several taxes specified in such schedule.

Exceptions

Section 801. That there shall not be taxed under this title any bond, note, or other instrument, issued by the United States, or by any foreign government, or by any State, Territory, or the District of Columbia, or local subdivision thereof, or municipal or other corporation exercising the taxing power, when issued in the exercise of a strictly governmental, taxing, or municipal function; or stocks and bonds issued by co-operative building and loan associations which are organized and operated exclusively for the benefit of their members and make loans only to their shareholders, or by mutual ditch or irrigating companies.

PENALTY FOR VIOLATIONS OF STAMP TAX PROVISIONS

Penalty for Failure to Affix Stamps or Cancel Same

Section 802. That whoever—

(a) Makes, signs, issues, or accepts, or causes to be made, signed, issued, or accepted, any instrument, document, or paper of any kind or description whatsoever without the full amount of tax thereon being duly paid;

(b) Consigns or ships, or causes to be consigned, or shipped, by parcel post any parcel, package, or article without the full amount of tax being duly paid;

(c) Manufactures or imports and sells, or offers for sale, or causes to be manufactured or imported and sold, or offered for

sale, any playing cards, package, or other article without the full amount of tax being duly paid;

(d) Makes use of any adhesive stamp to denote any tax imposed by this title without canceling or obliterating such stamp as prescribed in section eight hundred and four;

Is guilty of a misdemeanor and upon conviction thereof shall pay a fine of not more than \$100 for each offense.

Penalty for Fraudulent Use of Stamps, Dies or Plates

Section 803. That whoever—

(a) Fraudulently cuts, tears, or removes from any vellum, parchment, paper, instrument, writing, package, or article, upon which any tax is imposed by this title, any adhesive stamp or the impression of any stamp, die, plate, or other article provided, made, or used in pursuance of this title;

(b) Fraudulently uses, joins, fixes, or places to, with, or upon any vellum, parchment, paper, instrument, writing, package, or article, upon which any tax is imposed by this title, (1) any adhesive stamp, or the impression of any stamp, die, plate, or other article, which has been cut, torn, or removed from any other vellum, parchment, paper, instrument, writing, package, or article, upon which any tax is imposed by this title; or (2) any adhesive stamp or the impression of any stamp, die, plate, or other article of insufficient value; or (3) any forged or counterfeit stamp, or the impression of any forged or counterfeited stamp, die, plate, or other article;

(c) Willfully removes, or alters the cancellation, or defacing marks of, or otherwise prepares, any adhesive stamp, with intent to use, or cause the same to be used, after it has been already used, or knowingly or willfully buys, sells, offers for sale, or gives away, any such washed or restored stamp to any person for use, or knowingly uses the same;

(d) Knowingly and without lawful excuse (the burden of proof of such excuse being on the accused) has in possession any washed, restored, or altered stamp, which has been removed from any vellum, parchment, paper, instrument, writing, package, or article, is guilty of a misdemeanor, and upon conviction shall be punished by a fine of not more than \$1,000, or by imprisonment for not more than five years, or both, in the discretion of the court, and any such reused, canceled, or counterfeit stamp and the vellum, parchment, document, paper, package, or article upon which it is placed or impressed shall be forfeited to the United States.

Adhesive Stamp Regulations

Section 804. That whenever an adhesive stamp is used for denoting any tax imposed by this title, except as hereinafter provided, the person, corporation, partnership, or association, using or affixing the same shall write or stamp or cause to be written or stamped thereupon the initials of his or its name and the date upon which the same is attached or used, so that the

same may not again be used: Provided, That the Commissioner of Internal Revenue may prescribe such other method for the cancellation of such stamps as he may deem expedient.

Providing Stamp and Method of Affixing Same

Section 805. (a) That the Commissioner of Internal Revenue shall cause to be prepared and distributed for the payment of the taxes prescribed in this title suitable stamps denoting the tax on the document, articles, or thing to which the same may be affixed, and shall prescribe such method for the affixing of said stamps in substitution for or in addition to the method provided in this title, as he may deem expedient.

(b) The Commissioner of Internal Revenue, with the approval of the Secretary of the Treasury, is authorized to procure any of the stamps provided for in this title by contract whenever such stamps cannot be speedily prepared by the Bureau of Engraving and Printing; but this authority shall expire on the first day of January, nineteen hundred and eighteen, except as to imprinted stamps furnished under contract, authorized by the Commissioner of Internal Revenue.

Internal Revenue Laws Extended

(c) All internal-revenue laws relating to the assessment and collection of taxes are hereby extended to and made a part of this title, so far as applicable, for the purpose of collecting stamp taxes omitted through mistake or fraud from any instrument, document, paper, writing, parcel, package, or article named herein.

Stamps Furnished Postmaster General

Section 806. That the Commissioner of Internal Revenue shall furnish to the Postmaster General without prepayment a suitable quantity of adhesive stamps to be distributed to and kept on sale by the various postmasters in the United States. The Postmaster General may require each such postmaster to give additional or increased bond as postmaster for the value of the stamps so furnished, and each such postmaster shall deposit the receipts from the sale of such stamps to the credit of and render accounts to the Postmaster General at such times and in such form as he may by regulations prescribe. The Postmaster General shall at least once monthly transfer all collections from this source to the Treasury as internal-revenue collections.

Furnishing Stamps to United States Depositories

Section 807. That the collectors of the several districts shall furnish without prepayment to any assistant treasurer or designated depository of the United States located in their respective collection districts a suitable quantity of adhesive stamps for sale. In such cases the collector may require a bond, with sufficient sureties, to an amount equal to the value of the adhesive

stamps so furnished, conditioned for the faithful return, whenever so required, of all quantities or amounts undisposed of, and for the payment monthly of all quantities or amounts sold or not remaining on hand. The Secretary of the Treasury may from time to time make such regulations as he may find necessary to insure the safe-keeping or prevent the illegal use of all such adhesive stamps.

SCHEDULE A. STAMP TAXES

Effective Dec. 1, 1917

Tax Rate on Bonds, Debentures or Certificates of Indebtedness

1. **Bonds of indebtedness:** Bonds, debentures, or certificates of indebtedness issued on and after the first day of December, nineteen hundred and seventeen, by any person, corporation, partnership, or association, on each \$100 of face value or fraction thereof, 5 cents: Provided, That every renewal of the foregoing shall be taxed as a new issue: Provided further, That when a bond conditioned for the repayment or payment of money is given in a penal sum greater than the debt secured, the tax shall be based upon the amount secured.

Bond of Indemnity and Surety

2. **Bonds, indemnity and surety:** Bonds for indemnifying any person, corporation, partnership, or corporation who shall have become bound or engaged as surety, and all bonds for the due execution or performance of any contract, obligation, or requirement, or the duties of any office or position, and to account for money received by virtue thereof, and all other bonds of any description, except such as may be required in legal proceedings, not otherwise provided for in this schedule, 50 cents: Provided, That where a premium is charged for the execution of such bond the tax shall be paid at the rate of one per centum on each dollar or fractional part thereof of the premium charged: Provided further, That policies of reinsurance shall be exempt from the tax imposed by this subdivision.

Capital Stock Issue

3. **Capital stock issue:** On each original issue, whether on organization or reorganization, of certificates of stock by any association, company, or corporation, on each \$100 of face value or fraction thereof, 5 cents: Provided, That where capital stock is issued without face value, the tax shall be 5 cents per share, unless the actual value is in excess of \$100 per share, in which case the tax shall be 5 cents on each \$100 of actual value or fraction thereof.

The stamps representing the tax imposed by this subdivision shall be attached to the stock books and not to the certificates issued.

Sale or Transfer of Capital Stock

4. Capital stock, sales or transfers: On all sales, or agreements to sell, or memoranda of sales or deliveries of, or transfers of legal title to shares or certificates of stock in any association, company, or corporation, whether made upon or shown by the books of the association, company, or corporation, or by any assignment in blank, or by any delivery, or by any paper or agreement or memorandum or other evidence of transfer or sale, whether entitling the holder in any manner to the benefit of such stock or not, on each \$100 of face value or fraction thereof, 2 cents, and where such shares of stock are without par value, the tax shall be 2 cents on the transfer or sale or agreement to sell on each share, unless the actual value thereof is in excess of \$100 per share, in which case the tax shall be 2 cents on each \$100 of actual value or fraction thereof: Provided, That it is not intended by this title to impose a tax upon an agreement evidencing a deposit of stock certificates as collateral security for money loaned thereon, which stock certificates are not actually sold, nor upon such stock certificates so deposited: Provided further, That the tax shall not be imposed upon deliveries or transfers to a broker for sale, nor upon deliveries or transfers by a broker to a customer for whom and upon whose order he has purchased same, but such deliveries or transfers shall be accompanied by a certificate setting forth the facts: Provided further, That in case of sale where the evidence of transfer is shown only by the books of the company the stamp shall be placed upon such books; and where the change of ownership is by transfer of the certificate the stamp shall be placed upon the certificate; and in cases of an agreement to sell or where the transfer is by delivery of the certificate assigned in blank there shall be made and delivered by the seller to the buyer a bill or memorandum of such sale, to which the stamp shall be affixed; and every bill or memorandum of sale or agreement to sell before mentioned shall show the date thereof, the name of the seller, the amount of the sale, and the matter or thing to which it refers. Any person or persons liable to pay the tax as herein provided, or anyone who acts in the matter as agent or broker for such person or persons who shall make any such sale, or who shall in pursuance of any such sale deliver any stock or evidence of the sale of any stock or bill or memorandum thereof, as herein required, without having the proper stamps affixed thereto with intent to evade the foregoing provisions shall be deemed guilty of a misdemeanor, and upon conviction thereof shall pay a fine of not exceeding \$1,000, or be imprisoned not more than six months, or both, at the discretion of the court.

Sale of Produce on Exchange

5. Produce, sales of, on exchange: Upon each sale, agreement of sale, or agreement to sell, including so-called transferred or scratch sales, any products or merchandise at any exchange,

or board of trade, or other similar place, for future delivery, for each \$100 in value of the merchandise covered by said sale or agreement of sale or agreement to sell, 2 cents, and for each additional \$100 or fractional part thereof in excess of \$100, 2 cents: Provided, That on every sale or agreement of sale or agreement to sell as aforesaid there shall be made and delivered by the seller to the buyer a bill, memorandum, agreement, or other evidence of such sale, agreement of sale, or agreement to sell, to which there shall be affixed a lawful stamp or stamps in value equal to the amount of the tax on such sale: Provided further, That sellers of commodities described herein, having paid the tax provided by this subdivision, may transfer such contracts to a clearing house corporation or association, and such transfer shall not be deemed to be a sale, or agreement of sale, or an agreement to sell within the provisions of this Act, provided that such transfer shall not vest any beneficial interest in such clearing house association but shall be made for the sole purpose of enabling such clearing house association to adjust and balance the accounts of the members of said clearing house association on their several contracts. And every such bill, memorandum, or other evidence of sale or agreement to sell shall show the date thereof, the name of the seller, the amount of the sale, and the matter or thing to which it refers; and any person or persons liable to pay the tax as herein provided, or anyone who acts in the matter as agent or broker for such person or persons, who shall make any such sale or agreement of sale, or agreement to sell, or who shall, in pursuance of any such sale, agreement of sale, or agreement to sell, deliver any such products or merchandise without a bill, memorandum, or other evidence thereof as herein required, or who shall deliver such bill, memorandum, or other evidence of sale, or agreement to sell, without having the proper stamps affixed thereto, with intent to evade the foregoing provisions, shall be deemed guilty of a misdemeanor, and upon conviction thereof shall pay a fine of not exceeding \$1,000, or be imprisoned not more than six months, or both, at the discretion of the court.

Exemption

That no bill, memorandum, agreement, or other evidence of such sale, or agreement of sale, or agreement to sell, in case of cash sales of products or merchandise for immediate or prompt delivery which in good faith are actually intended to be delivered shall be subject to this tax.

Notes, Drafts or Checks

6. Drafts or checks payable otherwise than at sight or on demand, promissory notes, except bank notes issued for circulation, and for each renewal of the same, for a sum not exceeding \$100, 2 cents; and for each additional \$100 or fractional part thereof, 2 cents.

Conveyance

7. **Conveyance:** Deed, instrument, or writing, whereby any lands, tenements, or other realty sold shall be granted, assigned, transferred, or otherwise conveyed to, or vested in, the purchaser or purchasers, or any other person or persons, by his, her, or their direction, when the consideration or value of the interest or property conveyed, exclusive of the value of any lien or encumbrance remaining thereon at the time of sale, exceeds \$100 and does not exceed \$500, 50 cents; and for each additional \$500 or fractional part thereof 50 cents: Provided, That nothing contained in this paragraph shall be so construed as to impose a tax upon any instrument or writing given to secure a debt.

Custom House Entries

8. **Entry of any goods, wares, or merchandise** at any custom-house, either for consumption or warehousing, not exceeding \$100 in value, 25 cents; exceeding \$100 and not exceeding \$500 in value, 50 cents; exceeding \$500 in value, \$1.

Custom Bonded Warehouse

9. **Entry for the withdrawal** of any goods or merchandise from customs bonded warehouse, 50 cents.

10. **Passage ticket**, one way or round trip, for each passenger, sold or issued in the United States for passage by any vessel to a port or place not in the United States, Canada, or Mexico, if costing not exceeding \$30, \$1; costing more than \$30 and not exceeding \$60, \$3; costing more than \$60, \$5: Provided, That such passage tickets, costing \$10 or less, shall be exempt from taxation.

Proxies

11. **Proxy** for voting at any election for officers, or meeting for the transaction of business, of any incorporated company or association, except religious, educational, charitable, fraternal, or literary societies, or public cemeteries, 10 cents.

Power of Attorney

12. **Power of attorney** granting authority to do or perform some act for or in behalf of the grantor, which authority is not otherwise vested in the grantee, 25 cents: Provided, That no stamps shall be required upon any papers necessary to be used for the collection of claims from the United States or from any State for pensions, back pay, bounty, or for property lost in the military or naval service or upon powers of attorney required in bankruptcy cases.

Playing Cards

13. **Playing Cards:** Upon every pack of playing cards containing not more than fifty-four cards, manufactured or imported, and sold, or removed for consumption or sale, after the passage

of this Act, a tax of 5 cents per pack in addition to the tax imposed under existing law.

Parcel Post

14. **Parcel post packages:**¹ Upon every parcel or package transported from one point in the United States to another by parcel post on which the postage amounts to 25 cents or more, a tax of 1 cent for each 25 cents or fractional part thereof charged for such transportation to be paid by the consignor.

No such parcel or package shall be transported until a stamp or stamps representing the tax due shall have been affixed thereto.

TITLE IX. WAR ESTATE TAX

Section 900. That in addition to the tax imposed by section two hundred and one of the Act entitled, "An Act to increase the revenue, and for other purposes," approved September eighth, nineteen hundred and sixteen:¹ As amended

(a) A tax equal to the following percentages of its value is hereby imposed upon the transfer of each net estate of every decedent dying after the passage of this Act, the transfer of which is taxable under such section (the value of such net estate to be determined as provided in Title II of such Act of September eighth, nineteen hundred and sixteen):

¹(**ACT OF SEPTEMBER 8th, 1916**) **Section 201.** That a tax (hereinafter in this title referred to as the tax), equal to the following percentages of the value of the net estate, to be determined as provided in section two hundred and three, is hereby imposed upon the transfer of the net estate of every decedent dying after the passage of this Act, whether a resident or nonresident of the United States:

One per centum of the amount of such net estate not in excess of \$50,000;

Two per centum of the amount by which such net estate exceeds \$50,000 and does not exceed \$150,000;

Three per centum of the amount by which such net estate exceeds \$150,000 and does not exceed \$250,000;

Four per centum of the amount by which such net estate exceeds \$250,000 and does not exceed \$450,000;

Five per centum of the amount by which such net estate exceeds \$450,000 and does not exceed \$1,000,000;

Six per centum of the amount by which such net estate exceeds \$1,000,000 and does not exceed \$2,000,000;

Seven per centum of the amount by which such net estate exceeds \$2,000,000 and does not exceed \$3,000,000;

Eight per centum of the amount by which such net estate exceeds \$3,000,000 and does not exceed \$4,000,000;

Nine per centum of the amount by which such net estate exceeds \$4,000,000 and does not exceed \$5,000,000; and

Ten per centum of the amount by which such net estate exceeds \$5,000,000.

Section 203. That for the purpose of the tax the value of the net estate shall be determined—

(a) In the case of a resident, by deducting from the value of the gross estate—

Estate Tax Rates

One-half of one per centum of the amount of such net estate not in excess of \$50,000;

One per centum of the amount by which such net estate exceeds \$50,000 and does not exceed \$150,000;

One and one-half per centum of the amount by which such net estate exceeds \$150,000 and does not exceed \$250,000;

Two per centum of the amount by which such net estate exceeds \$250,000 and does not exceed \$450,000;

Two and one-half per centum of the amount by which such net estate exceeds \$450,000 and does not exceed \$1,000,000;

Three per centum of the amount by which such net estate exceeds \$1,000,000 and does not exceed \$2,000,000;

Three and one-half per centum of the amount by which such net estate exceeds \$2,000,000 and does not exceed \$3,000,000;

Four per centum of the amount by which such net estate exceeds \$3,000,000 and does not exceed \$4,000,000;

Four and one-half per centum of the amount by which such net estate exceeds \$4,000,000 and does not exceed \$5,000,000;

Five per centum of the amount by which such net estate exceeds \$5,000,000 and does not exceed \$8,000,000;

Seven per centum of the amount by which such net estate exceeds \$8,000,000 and does not exceed \$10,000,000; and

Ten per centum of the amount by which such net estate exceeds \$10,000,000.

(1) Such amounts for funeral expenses, administration expenses, claims against the estate, unpaid mortgages, losses incurred during the settlement of the estate arising from fires, storms, shipwreck, or other casualty, and from theft, when such losses are not compensated for by insurance or otherwise, support during the settlement of the estate of those dependent upon the decedent, and such other charges against the estate, as are allowed by the laws of the jurisdiction, whether within or without the United States, under which the estate is being administered; and

(2) An exemption of \$50,000;

(b) In the case of a non-resident, by deducting from the value of that part of his gross estate which at the time of his death is situated in the United States that proportion of the deductions specified in paragraph (1) of subdivision (a) of this section which the value of such part bears to the value of his entire gross estate, wherever situated. But no deductions shall be allowed in the case of a non-resident unless the executor includes in the return required to be filed under section two hundred and five the value at the time of his death of that part of the gross estate of the non-resident not situated in the United States.

Exemptions

Section 901. That the tax imposed by this title shall not apply to the transfer of the net estate of any decedent dying while serving in the military or naval forces of the United States, during the continuance of the war in which the United States is now engaged, or if death results from injuries received or disease contracted in such service, within one year after the termination of such war. For the purposes of this section the termination of the war shall be evidenced by the proclamation of the President.

TITLE X. ADMINISTRATIVE PROVISIONS

Tax on Imports and Exports—West Indian Islands

Section 1000. That there shall be levied, collected, and paid in the United States, upon articles coming into the United States from the West Indian Islands acquired from Denmark, a tax equal to the internal-revenue tax imposed in the United States upon like articles of domestic manufacture; such articles shipped from said islands to the United States shall be exempt from the payment of any tax imposed by the internal-revenue laws of said islands: Provided, That there shall be levied, collected, and paid in said islands, upon articles imported from the United States, a tax equal to the internal-revenue tax imposed in said islands upon like articles there manufactured; and such articles going into said islands from the United States shall be exempt from payment of any tax imposed by the internal-revenue laws of the United States.

Administrative Provisions

Section 1001. That all administrative, special, or stamp provisions of law, including the law relating to the assessment of taxes, so far as applicable, are hereby extended to and made a part of this Act, and every person, corporation, partnership, or association liable to any tax imposed by this Act, or for the collection thereof, shall keep such records and render, under oath, such statements and returns, and shall comply with such regulations as the Commissioner of Internal Revenue, with the approval of the Secretary of the Treasury, may from time to time prescribe.

Returns on Tax Paid Articles

Section 1002. That where additional taxes are imposed by this Act upon articles or commodities, upon which the tax imposed by existing law has been paid, the person, corporation, partnership, or association required by this Act to pay the tax shall, within thirty days after its passage, make return under oath in such form and under such regulations as the Commissioner of Internal Revenue, with the approval of the Secretary of the Treasury, shall prescribe. Payment of the tax shown to be due may be extended to a date not exceeding seven months

from the passage of this Act, upon the filing of a bond for payment in such form and amount and with such sureties as the Commissioner of Internal Revenue, with the approval of the Secretary of the Treasury, may prescribe.

Collection of Taxes and Penalties

Section 1003. That in all cases where the method of collecting the tax imposed by this Act is not specifically provided, the tax shall be collected in such manner as the Commissioner of Internal Revenue, with the approval of the Secretary of the Treasury, may prescribe. All administrative and penalty provisions of Title VIII of this Act, in so far as applicable, shall apply to the collection of any tax which the Commissioner of Internal Revenue determines or prescribes shall be paid by stamp.

Penalty for Failure to Make or Making a Fraudulent Return

Section 1004. That whoever fails to make any return required by this Act or the regulations made under authority thereof within the time prescribed or who makes any false or fraudulent return, and whoever evades or attempts to evade any tax imposed by this Act or fails to collect or truly to account for and pay over any such tax, shall be subject to a penalty of not more than \$1,000, or to imprisonment for not more than one year, or both, at the discretion of the court, and in addition thereto a penalty of double the tax evaded, or not collected, or accounted for and paid over, to be assessed and collected in the same manner as taxes are assessed and collected, in any case in which the punishment is not otherwise specifically provided.

Section 1005. That the Commissioner of Internal Revenue, with the approval of the Secretary of the Treasury, is hereby authorized to make all needful rules and regulations for the enforcement of the provisions of this Act.

Tax Stamps on Hand

Section 1006. That where the rate of tax imposed by this Act, payable by stamps, is an increase over previously existing rates, stamps on hand in the collectors' offices and in the Bureau of Internal Revenue may continue to be used until the supply on hand is exhausted, but shall be sold and accounted for at the rates provided by this Act, and assessment shall be made against manufacturers and other taxpayers having such stamps on hand on the day this Act takes effect for the difference between the amount paid for such stamps and the tax due at the rates provided by this Act.

Contract of Sale Made Prior to May 9, 1917, to be Executed

After Oct. 3, 1917

Section 1007. That (a) if any person, corporation, partnership, or association has prior to May ninth, nineteen hundred

and seventeen, made a bona fide contract with a dealer for the sale, after the tax takes effect, of any article (or, in the case of moving picture films, such a contract with a dealer, exchange, or exhibitor, for the sale or lease thereof) upon which a tax is imposed under Title III, IV, or VI, or under subdivision thirteen of Schedule A of Title VIII, or under this section, and (b) if such contract does not permit the adding of the whole of such tax to the amount to be paid under such contract, then the vendee or lessee shall, in lieu of the vendor or lessor, pay so much of such tax as is not so permitted to be added to the contract price.

The taxes payable by the vendee or lessee under this section shall be paid to the vendor or lessor at the time the sale or lease is consummated, and collected, returned, and paid to the United States by such vendor or lessor in the same manner as provided in section five hundred and three.

The term "dealer" as used in this section includes a vendee who purchases any article with intent to use it in the manufacture or production of another article intended for sale.

Disregard Fraction of Less Than One-Half Cent

Section 1008. That in the payment of any tax under this Act not payable by stamp a fractional part of a cent shall be disregarded unless it amounts to one-half cent or more, in which case it shall be increased to one cent.

Advance Payment of Income and Excess Profit Taxes

Section 1009. That the Secretary of the Treasury, under rules and regulations prescribed by him, shall permit taxpayers liable to income and excess profits taxes to make payments in advance in installments or in whole of an amount not in excess of the estimated taxes which will be due from them, and upon determination of the taxes actually due any amount paid in excess shall be refunded as taxes erroneously collected: Provided, That when payment is made in installments at least one-fourth of such estimated tax shall be paid before the expiration of thirty days after the close of the taxable year, at least an additional one-fourth within two months after the close of the taxable year, at least an additional one-fourth within four months after the close of the taxable year, and the remainder of the tax due on or before the time now fixed by law for such payment: Provided further, That the Secretary of the Treasury, under rules and regulations prescribed by him, may allow credit against such taxes so paid in advance of an amount not exceeding three per centum per annum calculated upon the amount so paid from the date of such payment to the date now fixed by law for such payment; but no such credit shall be allowed on payments in excess of taxes determined to be due, nor on payments made after the expiration of four and one-half months after the close of the taxable year. All penalties provided by exist-

ing law for failure to pay tax when due are hereby made applicable to any failure to pay the tax at the time or times required in this section.

Form of Payment of Income and Excess Profit Taxes

Section 1010. That under rules and regulations prescribed by the Secretary of the Treasury, collectors of internal revenue may receive, at par and accrued interest, certificates of indebtedness issued under section six of the Act entitled "An Act to authorize an issue of bonds to meet expenditures for the national security and defense, and, for the purpose of assisting in the prosecution of the war, to extend credit to foreign governments, and for other purposes," approved April twenty-fourth, nineteen hundred and seventeen, and any subsequent Act or Acts, and uncertified checks in payment of income and excess-profits taxes, during such time and under such regulations as the Commissioner of Internal Revenue, with the approval of the Secretary of the Treasury, shall prescribe; but if a check so received is not paid by the bank on which it is drawn the person by whom such check has been tendered shall remain liable for the payment of the tax and for all legal penalties and additions the same as if such check had not been tendered.

TITLE XI. POSTAL RATES

Effective November 2, 1917

First Class Mail Increase

Section 1100. That the rate of postage on all mail matter of the first class, except postal cards, shall thirty days after the passage of this Act be, in addition to the existing rate, 1 cent for each ounce or fraction thereof: Provided, That the rate of postage on drop letters of the first class, shall be 2 cents an ounce or fraction thereof. Postal cards, and private mailing or post cards when complying with the requirements of existing law, shall be transmitted through the mails at 1 cent each in addition to the existing rate.

Free Postage

That letters written and mailed by soldiers, sailors, and marines assigned to duty in a foreign country engaged in the present war may be mailed free of postage, subject to such rules and regulations as may be prescribed by the Postmaster General.

Publication Provisions

Section 1101. That on and after July first, nineteen hundred and eighteen, the rates of postage on publications entered as second-class matter (including sample copies to the extent of ten per centum of the weight of copies mailed to subscribers during the calendar year) when sent by the publisher thereof

from the post office of publication or other post office, or when sent by a news agent to actual subscribers thereto, or to other news agents for the purpose of sale;

(a) In the case of the portion of such publication devoted to matter other than advertisements, shall be as follows: (1) On and after July first, nineteen hundred and eighteen, and until July first, nineteen hundred and nineteen, $1\frac{1}{4}$ cents per pound or fraction thereof; (2) on and after July first, nineteen hundred and nineteen, $1\frac{1}{2}$ cents per pound or fraction thereof;

(b) In the case of the portion of such publication devoted to advertisements the rates per pound or fraction thereof for delivery within the several zones applicable to fourth-class matter shall be as follows (but where the space devoted to advertisements does not exceed five per centum of the total space, the rate of postage shall be the same as if the whole of such publication was devoted to matter other than advertisements): (1) On and after July first, nineteen hundred and eighteen, and until July first, nineteen hundred and nineteen, for the first and second zones, $1\frac{1}{4}$ cents; for the third zone, $1\frac{1}{2}$ cents; for the fourth zone, 2 cents; for the fifth zone, $2\frac{1}{4}$ cents; for the sixth zone, $2\frac{1}{2}$ cents; for the seventh zone, 3 cents; for the eighth zone, $3\frac{1}{4}$ cents; (2) on and after July first, nineteen hundred and nineteen, and until July first, nineteen hundred and twenty, for the first and second zones, $1\frac{1}{2}$ cents; for the third zone, 2 cents; for the fourth zone, 3 cents; for the fifth zone, $3\frac{1}{2}$ cents; for the sixth zone, 4 cents; for the seventh zone, 5 cents; for the eighth zone, $5\frac{1}{2}$ cents; (3) on and after July first, nineteen hundred and twenty, and until July first, nineteen hundred and twenty-one, for the first and second zones, $1\frac{3}{4}$ cents; for the third zone, $2\frac{1}{2}$ cents; for the fourth zone, 4 cents; for the fifth zone, $4\frac{3}{4}$ cents; for the sixth zone, $5\frac{1}{2}$ cents; for the seventh zone, 7 cents; for the eighth zone, $7\frac{3}{4}$ cents; (4) on and after July first, nineteen hundred and twenty-one, for the first and second zones, 2 cents; for the third zone, 3 cents; for the fourth zone, 5 cents; for the fifth zone, 6 cents; for the sixth zone, 7 cents; for the seventh zone, 9 cents; for the eighth zone, 10 cents;

(c) With the first mailing of each issue of each such publication, the publisher shall file with the postmaster a copy of such issue, together with a statement containing such information as the Postmaster General may prescribe for determining the postage chargeable thereon.

Daily Newspapers

Section 1102. That the rate of postage on daily newspapers, when the same are deposited in a letter-carrier office for delivery by its carriers, shall be the same as now provided by law; and nothing in this title shall affect existing law as to free circulation and existing rates on second-class mail matter within the county of publication: Provided, That the Postmaster General may hereafter require publishers to separate or make up to

zones in such a manner as he may direct all mail matter of the second class when offered for mailing.

Religious, Educational Periodicals, Etc

Section 1103. That in the case of newspapers and periodicals entitled to be entered as second-class matter and maintained by and in the interest of religious, educational, scientific, philanthropic, agricultural, labor, or fraternal organizations or associations, not organized for profit and none of the net income of which inures to the benefit of any private stockholder or individual, the second-class postage rates shall be, irrespective of the zone in which delivered (except when the same are deposited in a letter carrier office for delivery by its carriers, in which case the rates shall be the same as now provided by law), $1\frac{1}{8}$ cents a pound or fraction thereof on and after July first, nineteen hundred and eighteen, and until July first, nineteen hundred and nineteen, and on and after July first, nineteen hundred and nineteen, $1\frac{1}{4}$ cents a pound or fraction thereof. The publishers of such newspapers or periodicals before being entitled to the foregoing rates shall furnish to the Postmaster General, at such times and under such conditions as he may prescribe, satisfactory evidence that none of the net income of such organization inures to the benefit of any private stockholder or individual.

Miscellaneous Provisions

Section 1104. That where the total weight of any one edition or issue of any publication mailed to any one zone does not exceed one pound, the rate of postage shall be 1 cent.

Section 1105. The zone rates provided by this title shall relate to the entire bulk mailed to any one zone and not to individually addressed packages.

Section 1106. That where a newspaper or periodical is mailed by other than the publisher or his agent or a news agent or dealer, the rate shall be the same as now provided by law.

Section 1107. That the Postmaster General, on or before the tenth day of each month, shall pay into the general fund of the Treasury an amount equal to the difference between the estimated amount received during the preceding month for the transportation of first class matter through the mails and the estimated amount which would have been received under the provisions of the law in force at the time of the passage of this Act.

Postmasters' Salaries

Section 1108. That the salaries of postmasters at offices of the first, second, and third classes shall not be increased after July first, nineteen hundred and seventeen, during the existence of the present war. The compensation of postmasters at offices of the fourth class shall continue to be computed on the basis of the present rates of postage.

Clerk Hire Allowance

Section 1109. That where postmasters at offices of the third class have been since May first, nineteen hundred and seventeen, or hereafter are granted leave without pay for military purposes, the Postmaster General may allow, in addition to the maximum amounts which may now be allowed such offices for clerk hire, in accordance with law, an amount not to exceed fifty per centum of the salary of the postmaster.

Mailing Alcohol and Wines

Section 1110. That section five of the Act approved March third, nineteen hundred and seventeen, entitled "An Act making appropriations for the Post Office Department for the year ending June thirtieth, nineteen hundred and eighteen," shall not be construed to apply to ethyl alcohol for governmental, scientific, medicinal, mechanical, manufacturing, and industrial purposes, and the Postmaster General shall prescribe suitable rules and regulations to carry into effect this section in connection with the Act of which it is amendatory, nor shall said section be held to prohibit the use of the mails by regularly ordained ministers of religion, or by officers of regularly established churches, for ordering wines for sacramental uses, or by manufacturers and dealers for quoting and billing such wines for such purposes only.

TITLE XII. INCOME TAX AMENDMENTS

Section 1200. That subdivision (a) of section two of such Act of September eighth, nineteen hundred and sixteen:¹ is hereby amended to read as follows:

"(a) That, subject only to such exemptions and deductions as are hereinafter allowed, the net income of a taxable person shall include gains, profits, and income, derived from salaries,

Income Defined.

¹(ACT OF SEPTEMBER 8th, 1916) **Section 2** (a) That, subject only to such exemptions and deductions as are herinafter allowed, the net income of a taxable person shall include gains, profits, and income derived from salaries, wages, or compensation for personal service of whatever kind and in whatever form paid, or from professions, vocations, businesses, trade, commerce, or sales, or dealings in property, whether real or personal, growing out of the ownership or use of or interest in real or personal property, also from interest, rent, dividends, securities, or the transaction of any business carried on for gain or profit, or gains or profits and income derived from any source whatever: Provided, That the term "dividends" as used in this title shall be held to mean any distribution made or ordered to be made by a corporation, joint-stock company, association, or insurance company, out of its earnings or profits accrued since March first, nineteen hundred and thirteen, and payable to its shareholders, whether in cash or in stock of the corporation, joint-stock company, association, or insurance company, which stock dividend shall be considered income, to the amount of its cash value.

wages, or compensation for personal service of whatever kind and in whatever form paid, or from professions, vocations, businesses, trade, commerce, or sales, or dealings in property, whether real or personal, growing out of the ownership or use of or interest in real or personal property, also from interest, rent, dividends, securities, or the transaction of any business carried on for gain or profit, or gains or profits and income derived from any source whatever."

Exemptions

Section four of such Act of September eighth, nineteen hundred and sixteen:

is hereby amended to read as follows:

"Section 4. The following income shall be exempt from the provisions of this title:

"The proceeds of life insurance policies paid to individual beneficiaries upon the death of the insured; the amount paid by him under life insurance, endowment, or annuity contracts, either during the term or at the maturity of the term mentioned in the contract or upon surrender of the contract; the value of property acquired by gift, bequest, devise, or descent (but the income from such property shall be included as income); interest upon the obligations of a State or any political subdivision thereof or upon the obligations of the United States (but in the case of obligations of the United States issued after September first, nineteen hundred and seventeen, only if and to the extent provided in the Act authorizing the issue thereof) or its possessions or securities issued under the provisions of the Federal Farm Loan Act of July seventeenth, nineteen hundred and sixteen; the compensation of the present President of the United States during the term for which he has been elected and the judges of the Supreme and inferior courts of the United States now in office and the compensation of all officers and employees of a State, or any political subdivision thereof, except when such compensation is paid by the United States Government."

Section 1201 (1). That paragraphs second and third of subdivision (a) of section five of such Act of September eighth, nineteen hundred and sixteen:¹

are hereby amended to read as follows:

"Second. All interest paid within the year on his indebtedness except on indebtedness incurred for the purchase of obligations or securities the interest upon which is exempt from taxation as income under this title;

¹(ACT OF SEPTEMBER 8th, 1916) **Section 5.** Second. All interest paid within the year on his indebtedness;

Third. Taxes paid within the year imposed by the authority of the United States, or its Territories, or possessions, or any foreign country or under the authority of any State, county, school district, or municipality, or other taxing subdivision of any State, not including those assessed against local benefits;

"Third. Taxes paid within the year imposed by the authority of the United States (except income and excess profits taxes) or of its Territories, or possessions, or any foreign country, or by the authority of any State, county, school district, or municipality, or other taxing subdivision of any State, not including those assessed against local benefit;,"

Deductions Allowed

(2) That section five of such Act of September eighth, nineteen hundred and sixteen, is hereby amended by adding at the end of subdivision (a) a further paragraph, numbered nine, to read as follows:

"Ninth, Contributions or gifts actually made within the year to corporations or associations organized and operated exclusively for religious, charitable, scientific, or educational purposes, or to societies for the prevention of cruelty to children or animals, no part of the net income of which inures to the benefit of any private stockholder or individual, to an amount not in excess of fifteen per centum of the taxpayer's taxable net income as computed without the benefit of this paragraph. Such contributions or gifts shall be allowable as deductions only if verified under rules and regulations prescribed by the Commissioner of Internal Revenue, with the approval of the Secretary of the Treasury."

Section 1202. That (1) paragraphs second and third of subdivision (a) of section six of such Act of September eighth, nineteen hundred and sixteen:

are hereby amended to read as follows:

"Second. The proportion of all interest paid within the year by such person on his indebtedness (except on indebtedness incurred for the purchase of obligations or securities the interest upon which is exempt from taxation as income under this title) which the gross amount of his income for the year derived from sources within the United States bears to the gross amount of his income for the year derived from all sources within and without the United States, but this deduction shall be allowed only if such person includes in the return required by section eight all the information necessary for its calculation;

"Third. Taxes paid within the year imposed by the authority of the United States (except income and excess profits taxes); or of its Territories, or possessions, or by the authority of any State, county, school district, or municipality, or other taxing subdivision of any State, paid within the United States, not including those assessed against local benefits;,"

Deductions Allowed Non-Resident Aliens

(2) Section six of such Act of September eighth, nineteen hundred and sixteen:

is also further amended by adding a new subdivision to read as follows.

"(c) A non-resident alien individual shall receive the benefit of the deductions and credits provided for in this section only by filing or causing to be filed with the collector of Internal Revenue a true and accurate return of his total income, received from all sources, corporate or otherwise, in the United States, in the manner prescribed by this title; and in case of his failure to file such return the collector shall collect the tax on such income, and all property belonging to such non-resident alien individual shall be liable to distraint for the tax."

Personal Deductions

Section 1203 (1) That section seven of such Act of September eighth, nineteen hundred and sixteen:¹ is hereby amended to read as follows:

"Section 7. That for the purpose of the normal tax only, there shall be allowed as an exemption in the nature of a deduction from the amount of the net income of each citizen or resident of the United States, ascertained as provided herein, the sum of \$3,000, plus \$1,000 additional if the person making the return be a head of a family or a married man with a wife living with him, or plus the sum of \$1,000 additional if the person making the return be a married woman with a husband living with her; but in no event shall this additional exemption of \$1,000 be deducted by both a husband and a wife: **Provided,** That only one deduction of \$4,000 shall be made from the aggregate income of both husband and wife when living together; **Provided further,** That if the person making the return is the head of a family there shall be an additional exemption of \$200 for each child dependent upon such person, if under eighteen years of age, or if incapable of self-support because mentally or physically defective, but this provision shall operate only in the case of one parent in the same family: **Provided further,** That guardians or trustees shall be allowed to make this personal exemption as to income derived from the property of which such guardian or trustee has charge in favor of each ward or cestue que trust: **Provided further,** That in no event shall a ward or cestue que trust be allowed a greater personal exemption than as provided in this section, from the amount of net income

REPEALED

¹(ACT OF SEPTEMBER 8, 1916.)

Section 7 (b) A nonresident alien individual may receive the benefit of the exemption provided for in this section only by filing or causing to be filed with the collector of internal revenue a true and accurate return of his total income, received from all sources, corporate or otherwise, in the United States, in the manner prescribed by this title; and in case of his failure to file such return the collector shall collect the tax on such income, and all property belonging to such nonresident alien individual shall be liable to distraint for the tax.

received from all sources. There shall also be allowed an exemption from the amount of the net income of estates of deceased citizens or residents of the United States during the period of administration or settlement, and of trust or other estates of citizens or residents of the United States the income of which is not distributed annually or regularly under the provisions of subdivision (b) of section two, the sum of \$3,000, including such deductions as are allowed under section five."

(2) Subdivision (b) of section seven of such Act of September eighth, nineteen hundred and sixteen is hereby repealed¹

Section 1204 (1) That subdivisions (c) and (e) of section eight of such Act of September eighth, nineteen hundred and sixteen², are hereby amended to read as follows:

"(c) Guardians, trustees, executors, administrators, receivers, conservators, and all persons, corporations, or associations, acting in any fiduciary capacity, shall make and render a return of the income of the person, trust, or estate for whom or which they act, and be subject to all the provisions of this title which apply to individuals. Such fiduciary shall make oath that he has sufficient knowledge of the affairs of such persons, trust, or estate to enable him to make such return and that the same is, to the best of his knowledge and belief, true and correct, and be subject to all the provisions of this title which apply to individuals: **Provided**, That a return made by one or two or more joint fiduciaries filed in the district where such fiduciary resides, under such regulations as the Secretary of the Treasury may prescribe, shall be a sufficient compliance with the requirements of this paragraph: **Provided further**, That no return of income not exceeding \$3,000 shall be required except as in this title otherwise provided.

"(e) Persons carrying on business in partnership shall be liable for income tax only in their individual capacity, and the share of the profits of the partnership to which any taxable partner would be entitled if the same were divided, whether divided or otherwise, shall be returned for taxation and the tax paid under the provisions of this title: **Provided**, That from the net distributive interests on which the individual members shall be liable for tax, normal and additional, there shall be excluded their proportionate shares received from interests on the obliga-

¹(ACT OF SEPTEMBER 8th, 1916) Section 8 (e) Persons carrying on business in partnership shall be liable for income tax only in their individual capacity, and the share of the profits of the partnership to which any taxable partner would be entitled if the same were divided, whether divided or otherwise, shall be returned for taxation and the tax paid under the provisions of this title: **Provided**, That from the net distributive interests on which the individual members shall be liable for tax, normal and additional, there shall be excluded their proportionate shares received from interest on the obligations of a State or any political or taxing subdivision thereof, and upon the obligations of the United States and its possessions, and all taxes paid to the United States or to any possession thereof, or to any State,

tions of a State or any political or taxing subdivision thereof, and upon the obligations of the United States (if and to the extent that it is provided in the Act authorizing the issue of such obligations of the United States that they are exempt from taxation), and its possessions, and that for the purpose of computing the normal tax there shall be allowed a credit, as provided by section five, subdivision (b), for their proportionate share of the profits derived from dividends. Such partnership, when requested by the Commissioner of Internal Revenue or any district collector, shall render a correct return of the earnings, profits, and income of the partnership, except income exempt under section four of this Act, setting forth the item of the gross income and the deductions and credits allowed by this title, and the names and addresses of the individuals who would be entitled to the net earnings, profits, and income, if distributed. A partnership shall have the same privilege of fixing and making returns upon the basis of its own fiscal year as is accorded to corporations under this title. If a fiscal year ends during nineteen hundred and sixteen or a subsequent calendar year for which there is a rate of tax different from the rate for the preceding calendar year, then (1) the rate for such preceding calendar year shall apply to an amount of each partner's share of such partnership profits equal to the proportion which the part of such fiscal year falling within such calendar year bears to the full fiscal year, and (2) the rate for the calendar year during which such fiscal year ends shall apply to the remainder.

(2) Subdivision (d) of section eight of such Act of September eighth, nineteen hundred and sixteen¹ is hereby repealed:

county, or taxing subdivision of a State, and that for the purpose of computing the normal tax there shall be allowed a credit, as provided by section five, subdivision (b), for their proportionate share of the profits derived from dividends. And such partnership, when requested by the Commissioner of Internal Revenue, or any district collector, shall render a correct return of the earnings, profits, and income of the partnership, except income exempt under section four of this Act, setting forth the item of the gross income and the deductions and credits allowed by this title, and the names and addresses of the individuals who would be entitled to the net earnings, profits, and income, if distributed.

(REPEALED) ¹(ACT OF SEPTEMBER 8th, 1916) Section 8 (d) All persons, firms, companies, copartnerships, corporations, joint-stock companies, or associations, and insurance companies, except as hereinafter provided, in whatever capacity acting, having the control, receipt, disposal, or payment of fixed or determinable annual or periodical gains, profits, and income of another individual subject to tax, shall in behalf of such person deduct and withhold from the payment an amount equivalent to the normal tax upon the same and make and render a return, as aforesaid, but separate and distinct, of the portion of the income of each person from which the normal tax has been thus withheld, and containing also the name and address of such person or stating that the name and address or the address, as the case may be, are unknown: **Provided**, That the provision requiring the normal tax of individuals to be deducted and withheld at the source of the

Section 1205 (1) That subdivisions (b), (c), (f), and (g), of sections nine of such Act of September eighth, nineteen hundred and sixteen,¹ is hereby amended to read as follows:

income shall not be construed to require the withholding of such tax according to the two per centum normal tax rate herein prescribed until on and after January first, nineteen hundred and seventeen, and the law existing at the time of the passage of this Act shall govern the amount withheld or to be withheld at the source until January first, nineteen hundred and seventeen.

That in either case mentioned in subdivisions (c) and (d) of this section no return of income not exceeding \$3,000 shall be required, except as in this title provided.

1(ACT OF SEPTEMBER 8th, 1916) Section 9 (b) All persons, firms, copartnerships, companies, corporations, joint-stock companies, or associations, and insurance companies, in whatever capacity acting, including lessees or mortgagors of real or personal property, trustees acting in any trust capacity, executors, administrators, receivers, conservators, employers, and all officers and employees of the United States having the control, receipt, custody, disposal, or payment of interest, rent, salaries, wages, premiums, annuities, compensation, remuneration, emoluments, or other fixed or determinable annual or periodical gains, profits, and income of another person, exceeding \$3,000 for any taxable year, other than income derived from dividends on capital stock, or from the net earnings of corporations and joint-stock companies or associations, or insurance companies, the income of which is taxable under this title, who are required to make and render a return in behalf of another, as provided herein, to the collector of his, her, or its district, are hereby authorized and required to deduct and withhold from such annual or periodical gains, profits, and income such sum as will be sufficient to pay the normal tax imposed thereon by this title, and shall pay the amount withheld to the officer of the United States Government authorized to receive the same; and they are each hereby made personally liable for such tax, and they are each hereby indemnified against every person, corporation, association, or demand whatsoever for all payments which they shall make in pursuance and by virtue of this title.

In all cases where the income tax of a person is withheld and deducted and paid or to be paid at the source, such person shall not receive the benefit of the personal exemption allowed in section seven of this title except by an application for refund of the tax unless he shall, not less than thirty days prior to the day on which the return of his income is due, file with the person who is required to withhold and pay tax for him a signed notice in writing claiming the benefit of such exemption, and thereupon no tax shall be withheld upon the amount of such exemption; **Provided**, That if any person for the purpose of obtaining any allowance or reduction by virtue of a claim for such exemption, either for himself or for any other person, knowingly makes any false statement or false or fraudulent representation, he shall be liable to a penalty of not exceeding \$300.

And where the income tax is paid or to be paid at the source, no person shall be allowed the benefit of any deduction provided for in sections five or six of this title unless he shall, not less than thirty days prior to the day on which the return of his income is due, either (1) file with the person who is required to withhold and pay tax for him a true and correct return of his gains, profits, and income from all other sources, and also the deductions asked for, and the showing thus made shall then become a part of the return to be made in his behalf by the person required to withhold and pay the tax, or (2) likewise make application for deductions to the collector of the district in which return

“(b) All persons, corporations, partnerships, associations, and insurance companies, in whatever capacity acting, including lessees or mortgagors of real or personal property, trustees acting in any trust capacity, executors, administrators, receivers, conservators, employers, and all officers and employees of the United States, having the control, receipt, custody, disposal, or payment of interest, rent, salaries, wages, premiums, annuities, compensation, remuneration, emoluments, or other fixed or determinable annual or periodical gains, profits, and income of any nonresident alien individual, other than income derived from dividends on capital stock, or from the net earnings of a corporation, joint-stock company or association, or insurance company, which is taxable upon its net income as provided in this title, are hereby authorized and required to deduct and withhold from such annual or periodical gains, profits, and income such

is made or to be made for him: **Provided,** That when any amount allowable as a deduction is known at the time of receipt of fixed annual or periodical income by an individual subject to tax, he may file with the person, firm, or corporation making the payment a certificate, under penalty for false claim, and in such form as shall be prescribed by the Commissioner of Internal Revenue, stating the amount of such deduction and making a claim for an allowance of the same against the amount of tax otherwise required to be deducted and withheld at the source of the income, and such certificate shall likewise become a part of the return to be made in his behalf.

If such person is absent from the United States or is unable, owing to serious illness, to make the return, and application above provided for, the return and application may be made by an agent, he making oath that he has sufficient knowledge of the affairs and property of his principal to enable him to make a full and complete return, and that the return and application made by him are full and complete.

Section 9 (c) The amount of the normal tax hereinbefore imposed shall be deducted and withheld from fixed or determinable annual or periodical gains, profits, and income derived from interest upon bonds and mortgages, or deeds of trust or other similar obligations of corporations, joint-stock companies, associations, and insurance companies, whether payable annually or at shorter or longer periods, although such interest does not amount to three thousand (\$3,000.00) dollars, subject to the provisions of this title requiring the tax to be withheld at the source, and deducted from annual income and returned and paid to the government.

Section 9 (f) All persons, firms, or corporations undertaking as a matter of business or for profit the collection of foreign payments of such interest or dividends by means of coupons, checks, or bills of exchange shall obtain a license from the Commissioner of Internal Revenue, and shall be subject to such regulations enabling the Government to ascertain and verify the due withholding and payment of the income tax required to be withheld and paid as the Commissioner of Internal Revenue, with the approval of the Secretary of the Treasury, shall prescribe; and any person who shall knowingly undertake to collect such payments as aforesaid without having obtained a license therefor, or without complying with such regulations, shall be deemed guilty of a misdemeanor and for each offense be fined in a sum not exceeding \$5,000, or imprisoned for a term not exceeding one year, or both, in the discretion of the court.

sum as will be sufficient to pay the normal tax imposed thereon by this title, and shall make return thereof on or before March first of each year, and, on or before the time fixed by law for the payment of the tax, shall pay the amount withheld to the officer of the United States Government authorized to receive the same; and they are each hereby made personally liable for such tax, and they are each hereby indemnified against every person, corporation, partnership, association, or insurance company, or demand whatsoever for all payments which they shall make in pursuance and by virtue of this title.

“(c) The amount of the normal tax hereinbefore imposed shall also be deducted and withheld from fixed or determinable annual or periodical gains, profits and income derived from interest upon bonds and mortgages, or deeds of trust or other similar obligations of corporations, joint-stock companies, associations, and insurance companies (if such bonds, mortgages, or other obligations contain a contract or provision by which the obligor agrees to pay any portion of the tax imposed by this title upon the obligee or to reimburse the obligee for any portion of the tax or to pay the interest without deduction for any tax which the obligor may be required or permitted to pay thereon or to retain therefrom under any law of the United States), whether payable annually or at shorter or longer periods and whether such interest is payable to a non-resident alien individual or to an individual citizen or resident of the United States, subject to the provisions of the foregoing subdivisions (b) of this section requiring the tax to be withheld at the source and deducted from annual income and returned and paid to the Government, unless the person entitled to receive such interest shall file with the withholding agent, on or before February first, a signed notice in writing claiming the benefit of an exemption under section seven of this title.

Section 9 (g) The tax herein imposed upon gains, profits, and income not falling under the foregoing and not returned and paid by virtue of the foregoing shall be assessed by personal return under rules and regulations to be prescribed by the Commissioner of Internal Revenue and approved by the Secretary of the Treasury. The intent and purpose of this title is that all gains, profits, and income of a taxable class, as defined by this title, shall be charged and assessed with the corresponding tax, normal and additional, prescribed by this title, and said tax shall be paid by the owner of such income, or the proper representative having the receipt, custody, control, or disposal of the same. For the purpose of this title ownership or liability shall be determined as of the year for which a return is required to be rendered.

The provisions of this title relating to the deduction and payment of the tax at the source of income shall only apply to the normal tax hereinbefore imposed upon individuals.

License Required for Foreign Collections

“(f) All persons, corporations, partnerships, or associations, undertaking as a matter of business or for profit the collection of foreign payments of interest or dividends by means of coupons, checks, or bills of exchange shall obtain a license from the Commissioner of Internal Revenue, and shall be subject to such regulations enabling the Government to obtain the information required under this title, as the Commissioner of Internal Revenue, with the approval of the Secretary of the Treasury shall prescribe; and whoever knowingly undertakes to collect such payments as aforesaid without having obtained a license therefor or without complying with such regulations, shall be deemed guilty of a misdemeanor and for each offense be fined in a sum not exceeding \$5,000, or imprisoned for a term not exceeding one year, or both, in the discretion of the court.

General Provisions

“(g) The tax herein imposed upon gains, profits, and incomes not falling under the foregoing and not returned and paid by virtue of the foregoing or as otherwise provided by law shall be assessed by personal return under rules and regulations to be prescribed by the Commissioner of Internal Revenue and approved by the Secretary of the Treasury. The intent and purpose of this title is that all gains, profits, and income of a taxable class, as defined by this title, shall be charged and assessed with the corresponding tax, normal and additional, prescribed by this title, and said tax shall be paid by the owner of such income, or the proper representative having the receipt, custody, control, or disposal of the same. For the purpose of this title ownership or liability shall be determined as of the year for which a return is required to be rendered.

“The provisions of this section, except subdivision (c) relating to the deduction and payment of the tax at the source of income shall only apply to the normal tax hereinbefore imposed upon non-resident alien individuals.”

(2) Subdivisions (d) and (e) of section nine of such Act of September eighth, nineteen hundred and sixteen, are hereby repealed.¹

¹(REPEALED) Section 9 (d) And likewise the amount of such tax shall be deducted and withheld from coupons, checks, or bills of exchange for or in payment of interest upon bonds of foreign countries and upon foreign mortgages or like obligations (not payable in the United States), and also from coupons, checks, or bills of exchange for or in payment of any dividends upon the stock or interest upon the obligations of foreign corporations, associations, and insurance companies engaged in business in foreign countries.

And the tax in such cases shall be withheld, deducted, and returned for and in behalf of any person subject to the tax hereinbefore imposed, although such interest or dividends do not exceed \$3,000, by (1) any banker or person who shall sell or otherwise realize coupons, checks, or bills of exchange drawn or made in payment of any such interest or

Section 1206 (1) That the first paragraph of section ten of such Act of September eighth, nineteen hundred and sixteen:¹ is hereby amended to read as follows:

"Section 10 (a) That there shall be levied, assessed, collected, and paid annually upon the total net income received in the preceding calendar year from all sources by every corporation, joint-stock company or association, or insurance company, organized in the United States, no matter how created or organized, but not including partnerships, a tax of two per centum upon such income; and a like tax shall be levied, assessed, collected, and paid annually upon the total net income received in the preceding calendar year from all sources within the United States by every corporation, joint-stock company or association, or insurance company, organized, authorized, or existing under the laws of any foreign country, including interest on bonds, notes, or other interest-bearing obligations of residents, corporate or otherwise, and including the income derived from dividends on capital stock or from net earnings of resident corporations, joint-stock companies or associations, or insurance companies, whose net income is taxable under this title."

Undistributed Profits

(2) Section ten of such Act of September eighth, nineteen hundred and sixteen: is hereby further amended by adding a new subdivision as follows:

"(b) In addition to the income tax imposed by subdivision (a) of this section there shall be levied, assessed, collected, and paid annually an additional tax of ten per centum upon the amount remaining undistributed six months after the end of each calendar or fiscal year, of the total net income of every

dividends (not payable in the United States), and (2) any person who shall obtain payment (not in the United States), in behalf of another of such dividends and interest by means of coupons, checks, or bills of exchange, and also (3) any dealer in such coupons who shall purchase the same for any such dividends or interest (not payable in the United States), otherwise than from a banker or another dealer in such coupons.

(c) Where the tax is withheld at the source, the benefit of the exemption and the deductions allowable under this title may be had by complying with the foregoing provisions of this section.

¹**(ACT OF SEPTEMBER 8th, 1916) Section 10.** That there shall be levied, assessed, collected, and paid annually upon the total net income received in the preceding calendar year from all sources by every corporation, joint-stock company or association, or insurance company, organized in the United States, no matter how created or organized but not including partnerships, a tax of two per centum upon such income; and a like tax shall be levied, assessed, collected, and paid annually upon the total net income received in the preceding calendar year from all sources within the United States by every corporation, joint-stock company or association, or insurance company organized, authorized, or existing under the laws of any foreign country, including interest on bonds, notes, or other interest-bearing obligations of residents, corporate or otherwise, and including the income derived from

corporation, joint-stock company or association, or insurance company, received during the year, as determined for the purposes of the tax imposed by such subdivision (a), but not including the amount of any income taxes paid by it within the year imposed by the authority of the United States.

"The tax imposed by this subdivision shall not apply to that portion of such undistributed net income which is actually invested and employed in the business or is retained for employment in the reasonable requirements of the business or is invested in obligations of the United States issued after September first, nineteen hundred and seventeen: **Provided**, That if the Secretary of the Treasury ascertains and finds that any portion of such amount so retained at any time for employment in the business is not so employed or is not reasonably required in the business a tax of fifteen per centum shall be levied, assessed, collected, and paid thereon.

"The foregoing tax rates shall apply to the undistributed net income received by every taxable corporation, joint-stock company or association, or insurance company in the calendar year nineteen hundred and seventeen, and in each year thereafter, except that if it has fixed its own fiscal year under the provisions of existing law, the foregoing rates shall apply to the proportion of the taxable undistributed net income returned for the fiscal year ending prior to December thirty-first, nineteen hundred and seventeen, which the period between January first, nineteen hundred and seventeen, and the end of such fiscal year bears to the whole of such fiscal year."

Corporate Deductions

Section 1207 (1) That paragraphs third and fourth of subdivision (a) of section twelve of such Act of September eighth, nineteen hundred and sixteen¹ are hereby amended to read as follows:

dividends on capital stock or from net earnings of resident corporations, joint-stock companies or associations, or insurance companies whose net income is taxable under this title: **Provided**, That the term "dividends" as used in this title shall be held to mean any distribution made or ordered to be made by a corporation, joint-stock company, association, or insurance company, out of its earnings or profits accrued since March first, nineteen hundred and thirteen, and payable to its shareholders, whether in cash or in stock of the corporation, joint-stock company, association, or insurance company, which stock dividend shall be considered income, to the amount of its cash value.

Section 12. Third. The amount of interest paid within the year on its indebtedness to an amount of such indebtedness not in excess of the sum of (a) the entire amount of the paid-up stock outstanding at the close of the year, or, if no capital stock, the entire amount of capital employed in the business at the close of the year, and (b) one-half of its interest-bearing indebtedness then outstanding; **Provided**, That for the purpose of this title preferred capital stock shall not be considered interest-bearing indebtedness, and interest or dividends paid upon this stock shall not be deductible from gross income; **Provided**

"Third. The amount of interest paid within the year on its indebtedness (except on indebtedness incurred for the purchase of obligations or securities the interest upon which is exempt from taxation as income under this title) to an amount of such indebtedness not in excess of the sum of (a) the entire amount of the paid-up capital stock outstanding at the close of the year, or, if no capital stock, the entire amount of capital employed in the business at the close of the year, and (b) one-half of its interest-bearing indebtedness then outstanding: **Provided**, That for the purpose of this title preferred capital stock shall not be considered interest-bearing indebtedness, and interest or dividends paid upon this stock shall not be deductible from gross income: **Provided further**, That in cases wherein shares of capital stock are issued without par or nominal value, the amount of paid-up capital stock, within the meaning of this section, as represented by such shares, will be the amount of cash, or its equivalent, paid or transferred to the corporation as a consideration for such shares: **Provided further**, That in the case of indebtedness wholly secured by property collateral, tangible or intangible, the subject of sale or hypothecation in the ordinary business of such corporation, joint-stock company or association as a dealer only in the property constituting such collateral, or in loaning the funds thereby procured, the total interest paid by such corporation, company, or association within the year on any such indebtedness may be deducted as a part of its expenses of doing business, but interest on such indebted-

further, That in cases wherein shares of capital stock are issued without par or nominal value, the amount of paid-up capital stock, within the meaning of this section, as represented by such shares, will be the amount of cash, or its equivalent, paid or transferred to the corporation as a consideration for such shares; **Provided further**, That in the case of indebtedness wholly secured by property collateral, tangible or intangible, the subject of sale or hypothecation in the ordinary business of such corporation, joint-stock company or association as a dealer only in the property, constituting such collateral, or in loaning the funds thereby procured, the total interest paid by such corporation, company, or association within the year on any such indebtedness may be deducted as a part of its expenses of doing business, but interest on such indebtedness shall only be deductible on an amount of such indebtedness not in excess of the actual value of such property collateral; **Provided further**, That in the case of bonds or other indebtedness, which have been issued with a guaranty that the interest payable thereon shall be free from taxation, no deduction for the payment of the tax herein imposed, or any other tax paid pursuant to such guaranty, shall be allowed; and in the case of a bank, banking association, loan or trust company, interest paid within the year on deposits or on moneys received for investment and secured by interest-bearing certificates of indebtedness issued by such bank, banking association, loan or trust company;

Fourth. Taxes paid within the year imposed by the authority of the United States, or its Territories, or possessions, or any foreign country, or under the authority of any State, county, school district, or municipality, or other taxing subdivision of any State, not including those assessed against local benefits.

ness shall only be deductible on an amount of such indebtedness not in excess of the actual value of such property collateral; **Provided further**, That in the case of bonds or other indebtedness, which have been issued with a guaranty that the interest payable thereon shall be free from taxation, no deduction for the payment of the tax herein imposed, or any other tax paid pursuant to such guaranty, shall be allowed; and in the case of a bank, banking association, loan or trust company, interest paid within the year on deposits or on moneys received for investment and secured by interest-bearing certificates of indebtedness issued by such bank, banking association, loan or trust company shall be deducted;

"Fourth. Taxes paid within the year imposed by the authority of the United States (except income and excess profits taxes), or of its Territories, or possessions, or any foreign country, or by the authority of any State, county, school district, or municipality, or other taxing subdivision of any State, not including those assessed against local benefits."

Deductions—Foreign Corporations

(2) Paragraphs third and fourth of subdivision (b) of section twelve of such Act of September eighth, nineteen hundred and sixteen:¹

are hereby amended to read as follows:

"Third. The amount of interest paid within the year on its indebtedness (except on indebtedness incurred for the purchase of obligations or securities the interest upon which is exempt from taxation as income under this title) to an amount

¹(**ACT OF SEPTEMBER 8th, 1916**) **Section 12.** **Third.** The amount of interest paid within the year on its indebtedness to an amount of such indebtedness not in excess of the proportion of the sum of (a) the entire amount of the paid-up capital stock outstanding at the close of the year, or, if no capital stock, the entire amount of the capital employed in the business at the close of the year, and (b) one-half of its interest-bearing indebtedness then outstanding, which the gross amount of its income for the year from business transacted and capital invested within the United States bears to the gross amount of its income derived from all sources within and without the United States: **Provided**, That in the case of bonds or other indebtedness which have been issued with a guaranty that the interest payable thereon shall be free from taxation, no deduction for the payment of the tax herein imposed or any other tax paid pursuant to such guaranty shall be allowed; and in case of a bank, banking association, loan or trust company, or branch thereof, interest paid within the year on deposits by or on moneys received for investment from either citizens or residents of the United States and secured by interest-bearing certificates of indebtedness, issued by such bank, banking association, loan or trust company, or branch thereof;

Fourth. Taxes paid within the year imposed by the authority of the United States, or its Territories, or possessions, or under the authority of any State, county, school district, or municipality, or other taxing subdivision of any State, paid within the United States, not including those assessed against local benefits;

of such indebtedness not in excess of the proportion of the sum of (a) the entire amount of the paid-up capital stock outstanding at the close of the year, or, if no capital stock, the entire amount of the capital employed in the business at the close of the year, and (b) one-half of its interest-bearing indebtedness then outstanding, which the gross amount of its income for the year from business transacted and capital invested within the United States bears to the gross amount of its income derived from all sources within and without the United States: **Provided**, That in the case of bonds or other indebtedness which have been issued with a guaranty that the interest payable thereon shall be free from taxation, no deduction for the payment of the tax herein imposed or any other tax paid pursuant to such guaranty shall be allowed; and in case of a bank, banking association, loan or trust company, or branch thereof, interest paid within the year on deposits by or on moneys received for investment from either citizens or residents of the United States and secured by interest-bearing certificates of indebtedness issued by such bank, banking association, loan or trust company, or branch thereof;

"Fourth. Taxes paid within the year imposed by the authority of the United States (except income and excess profits taxes), or of its Territories, or possessions, or by the authority of any State, county, school district, or municipality, or other taxing subdivision of any State, paid within the United States, not including those assessed against local benefits."

Withholding Income of Non-Resident Aliens

Section 1208. That subdivision (e) of section thirteen of such Act of September eighth, nineteen hundred and sixteen:¹ is hereby amended to read as follows:

"(e) All the provisions of this title relating to the tax authorized and required to be deducted and withheld and paid to the officer of the United States Government authorized to receive the same from the income of non-resident alien individuals from sources within the United States shall be made applicable to the tax imposed by subdivision (a) of section ten upon income derived from interest upon bonds and mortgages or deeds of trust or similar obligations of domestic or other

¹(ACT OF SEPTEMBER 8th, 1916) Section 13 (e) All the provisions of this title relating to the tax authorized and required to be deducted and withheld and paid to the officer of the United States Government authorized to receive the same from the income of non-resident alien individuals from sources within the United States shall be made applicable to incomes derived from interest upon bonds and mortgages or deeds of trust or similar obligations of domestic or other resident corporations, joint-stock companies or associations, and insurance companies by nonresident alien firms, copartnerships, companies, corporations, joint-stock companies or associations, and insurance companies not engaged in business or trade within the United States and not having any office or place of business therein.

resident corporations, joint-stock companies or associations, and insurance companies by non-resident alien firms, co-partnerships, companies, corporations, joint-stock companies or associations, and insurance companies, not engaged in business or trade within the United States and not having any office or place of business therein."

Penalty for Failure to File Return

Section 1209. That section eighteen of such Act of September eighth, nineteen hundred and sixteen¹ is hereby amended to read as follows:

"**Section 18.** That any person, corporation, partnership, association, or insurance company, liable to pay the tax, to make a return or to supply information required under this Title, who refuses or neglects to pay such tax, to make such return or to supply such information at the time or times herein specified in each year, shall be liable, except as otherwise specially provided in this title, to a penalty of not less than \$20 nor more than \$1,000. Any individual or any officer of any corporation, partnership, association, or insurance company, required by law to make, render, sign, or verify any return or to supply any information, who makes any false or fraudulent return or statement with intent to defeat or evade the assessment required by this title to be made, shall be guilty of a misdemeanor, and shall be fined not exceeding \$2,000 or be imprisoned not exceeding one year, or both, in the discretion of the court, with the costs of prosecution: **Provided,** That where any tax heretofore due and payable has been duly paid by the taxpayer, it shall not be re-collected from any withholding agent required to retain it at its source, nor shall any penalty be imposed or collected in such cases from the taxpayer, or such withholding agent whose duty it was to retain it, for failure to return or pay the same, unless such failure was fraudulent and for the purpose of evading payment."

Information to Commissioner Compulsory

Section 1210. That section twenty-six of such Act of September eighth, nineteen hundred and sixteen, as amended by the Act entitled "An Act to provide increased revenue to defray the expenses of the increased appropriations for the Army and Navy and the extensions of fortifications, and for other purposes."

¹(**ACT OF SEPTEMBER 8th, 1916**) **Section 18.** That if any individual liable to make the return or pay the tax aforesaid shall refuse or neglect to make such return at the time or times hereinbefore specified in each year, he shall be liable to a penalty of not less than \$20 nor more than \$1,000. Any individual or any officer of any corporation, joint-stock company or association, or insurance company required by law to make, render, sign, or verify any return who makes any false or fraudulent return or statement with intent to defeat or evade the assessment required by this title to be made shall be guilty of a misdemeanor, and shall be fined not exceeding \$2,000 or be imprisoned not exceeding

approved March third, nineteen hundred and seventeen, is hereby amended to read as follows:

"Section 26. Every corporation, joint-stock company or association, or insurance company subject to the tax herein imposed, when required by the Commissioner of Internal Revenue, shall render a correct return, duly verified under oath, of its payments of dividends, whether made in cash or its equivalent or in stock, including the names and addresses of stockholders and the number of shares owned by each, and the tax years and the applicable amounts in which such dividends were earned, in such form and manner as may be prescribed by the Commissioner of Internal Revenue, with the approval of the Secretary of the Treasury."

Brokers' Returns of Customer Names, Etc.

Section 1211. That Title I of such Act of September eighth, nineteen hundred and sixteen, is hereby amended by adding to Part III six new sections, as follows:

"Section 27. That every person, corporation, partnership, or association, doing business as a broker on any exchange or board of trade or other similar place of business shall, when required by the Commissioner of Internal Revenue, render a correct return duly verified under oath, under such rules and regulations as the Commissioner of Internal Revenue, with the approval of the Secretary of the Treasury, may prescribe, showing the names of customers for whom such person, corporation, partnership, or association has transacted any business, with such details as to the profits, losses, or other information which the commissioner may require, as to each of such customers, as will enable the Commissioner of Internal Revenue to determine whether all income tax due on profits or gains of such customers has been paid.

Returns by Party Making Payments to Others

Section 28. That all persons, corporations, partnerships, associations, and insurance companies, in whatever capacity acting, including lessees or mortgagors of real or personal property, trustees acting in any trust capacity, executors, administrators, receivers, conservators, and employers, making payment to another person, corporation, partnership, association, or insurance company, of interest, rent, salaries, wages, premiums, annuities, compensation, remuneration, emoluments, or other fixed or deter-

one year, or both, in the discretion of the court, with the costs of prosecution: **Provided,** That where any tax heretofore due and payable has been duly paid by the taxpayer, it shall not be re-collected from any person or corporation required to retain it at its source, nor shall any penalty be imposed or collected in such cases from the taxpayer, or such person or corporation whose duty it was to retain it, for failure to return or pay the same, unless such failure was fraudulent and for the purpose of evading payment.

minable gains, profits, and income (other than payments described in sections twenty-six and twenty-seven), of \$800 or more in any taxable year, or, in the case of such payments made by the United States, the officers or employees of the United States having information as to such payments and required to make returns in regard thereto by the regulations hereinafter provided for, are hereby authorized and required to render a true and accurate return to the Commissioner of Internal Revenue, under such rules and regulations and in such form and manner as may be prescribed by him, with the approval of the Secretary of the Treasury, setting forth the amount of such gains, profits, and income, and the name and address of the recipient of such payment: **Provided**, That such returns shall be required, regardless of amounts, in the case of payments of interest upon bonds and mortgages or deeds of trust or other similar obligations of corporations, joint-stock companies, associations, and insurance companies, and in the case of collections of items (not payable in the United States) of interest upon the bonds of foreign countries and interest from the bonds and dividends from the stock of foreign corporations by persons, corporations, partnerships, or associations, undertaking as a matter of business or for profit the collection of foreign payments of such interest or dividends by means of coupons, checks, or bills of exchange.

"When necessary to make effective the provisions of this section the name and address of the recipient of income shall, be furnished upon demand of the person, corporation, partnership, association, or insurance company paying the income.

"The provisions of this section shall apply to the calendar year nineteen hundred and seventeen and each calendar year thereafter, but shall not apply to the payment of interest on obligations of the United States.

Excess Profits Tax Credits

"**Section 29.** That in assessing income tax the net income embraced in the return shall also be credited with the amount of any excess profits tax imposed by Act of Congress and assessed for the same calendar or fiscal year upon the taxpayer, and, in the case of a member of a partnership, with his proportionate share of such excess profits tax imposed upon the partnership. (Under Act of March third, nineteen hundred and seventeen, repealed.)

"**Section 30.** That nothing in section II of the Act approved October third, nineteen hundred and thirteen, entitled "An Act to reduce tariff duties and to provide revenue for the Government, and for other purposes," or in this title, shall be construed as taxing the income of foreign governments received from investments in the United States in stocks, bonds, or other domestic securities, owned by such foreign governments, or

from interest on deposits in banks in the United States of moneys belonging to foreign governments.

Dividends Defined

"Section 31 (a) That the term 'dividends' as used in this title shall be held to mean any distribution made or ordered to be made by a corporation, joint-stock company, association, or insurance company, out of its earnings or profits accrued since March first, nineteen hundred and thirteen, and payable to its shareholders, whether in cash or in stock of the corporation, joint-stock company, association, or insurance company, which stock dividend shall be considered income, to the amount of the earnings or profits so distributed.

Deferred Dividends

"(b) Any distribution made to the shareholders or members of a corporation, joint-stock company, or association, or insurance company, in the year nineteen hundred and seventeen, or subsequent tax years, shall be deemed to have been made from the most recently accumulated undivided profits or surplus, and shall constitute a part of the annual income of the distributee for the year in which received, and shall be taxed to the distributee at the rates prescribed by law for the years in which such profits or surplus were accumulated by the corporation, joint-stock company, association, or insurance company, but nothing herein shall be construed as taxing any earnings or profits accrued prior to March first, nineteen hundred and thirteen, but such earnings or profits may be distributed in stock dividends or otherwise, exempt from the tax, after the distribution of earnings and profits accrued since March first, nineteen hundred and thirteen, has been made. This subdivision shall not apply to any distribution made prior to August sixth, nineteen hundred and seventeen, out of earnings or profits accrued prior to March first, nineteen hundred and thirteen.

Insurance Not Deductible

"Section 32. That premiums paid on life insurance policies covering the lives of officers, employees, or those financially interested in any trade or business conducted by an individual, partnership, corporation, joint-stock company or association, or insurance company, shall not be deducted in computing the net income of such individual, corporation, joint-stock company or association, or insurance company, or in computing the profits of such partnership for the purposes of subdivision (e) of section nine."

Withheld Taxes Released

Section 1212. That any amount heretofore withheld by any withholding agent as required by Title I of such Act of September eighth, nineteen hundred and sixteen:

On account of the tax imposed upon the income of any individual, a citizen or resident of the United States, for the calendar year nineteen hundred and seventeen, except in the cases covered by subdivision (c) of section nine of such Act, as amended by this Act, shall be released and paid over to such individual, and the entire tax upon the income of such individual for such year shall be assessed and collected in the manner prescribed by such Act as amended by this Act.

TITLE XIII. GENERAL PROVISIONS

Section 1300. That if any clause, sentence, paragraph, or part of this Act shall for any reason be adjudged by any court of competent jurisdiction to be invalid, such judgment shall not affect, impair, or invalidate the remainder of said Act, but shall be confined in its operation to the clause, sentence, paragraph, or part thereof directly involved in the controversy in which such judgment shall have been rendered.

Repeal

Section 1301. That Title I of the Act entitled "An Act to provide increased revenue to defray the expenses of the increased appropriations for the Army and Navy and the extension of fortifications, and for other purposes," approved March third, nineteen hundred and seventeen, be, and the same is hereby, repealed.

Section 1302. That unless otherwise herein specially provided, this Act shall take effect on the day following its passage.

Approved, October third, nineteen hundred and seventeen.

DIGEST

OF

COURT AND TREASURY DECISIONS
RULES, REGULATIONS, OPINIONS
AND COMMENTARIES

GOVERNING

THE ADMINISTRATION AND OPERATION

OF THE

ACT OF SEPTEMBER 8, 1916

ACT OF OCTOBER 3, 1917

TREASURY DECISIONS

Abatement or Refund of Taxes, Form To Be Used: Claims for refunding of assessed taxes and penalties must be made on Form 46. The burden of proof rests upon the claimant. All the facts relied upon in support of claim should be clearly set forth under oath. The claim should be still further supported by an affidavit of the deputy collector of the proper division, and by certificate of the collector.

Claims for abatement of taxes and penalties erroneously or illegally assessed, or which are abatable under remedial acts, etc., must be made out upon Form 47. (Reg. 14, Revised.)

Claims for Refund of Excess Amount Withheld at Source: Claims for abatement of taxes erroneously assessed, or which are excessive in amount, may, prior to collection thereof, be filed under the provision of said Sec. 3320, Rev. St., either by withholding agent by whom assessment was made, or by the person on account of whom such taxes were withheld. (Art. 33, Reg. 33.)

When it is found that a withholding agent has failed to withhold tax and make return, field officers will at once procure the return required by law and regulations. The delinquent return should be accompanied by claim, executed on Form 47, for the abatement of such items of tax as can be shown to have been paid by the individual taxpayers. The delinquent withholding return will then receive consideration in connection with personal returns or to be made by individuals concerned. (Letter 1265.)

Accounts Kept on Basis Other Than of Actual Receipts and Disbursements: As this office requires no special system of bookkeeping, neither does it require any specific method by which net income shall be returned by corporations. (T. D. 2161.)

It is immaterial whether deductions except for taxes and losses are evidenced by actual disbursements in cash, or whether evidenced in such other way as to be properly acknowledged by corporate officers and so entered on books of the corporation as to constitute a liability against assets of corporation making the return. Except as the same may be modified by provisions of the act, limiting deductions and authorizing others, the net income as returned for the purpose of the tax should be the same as that shown by books or annual balance sheet. (Art. 158, Reg. 33.)

Accounts Payable: Representing ordinary necessary expenses of maintaining and operating business and property of corporation, if actually charged into the expense account, and entered on books as to constitute a liability against assets of company, and so treated in preparation of return of annual net income, they will not be included in deduction in year in which they are actually paid in cash, or its equivalent, such accounts payable may be deducted from gross income of year in which expenses were incurred.

This ruling applies only to accounts payable representing ordinary and necessary expenses of maintaining and operating business; that is, to such expenses as are incurred by corporation in producing gross income which is required to return. (Acting Commissioner David A. Gates, March 2nd, 1915.)

Accounts Receivable Are Income for the Year Created: The net income of the individual in the mercantile business should be ascertained from his books, and the actual inventory of his merchandise which is in accordance with established procedure, in all mercantile businesses.

Value at Which Stock Is Carried on the Books of the Owner Is Not Conclusive Evidence of Its Actual Value: *U. S. v. Guggenheim Exploration Co.* U. S. District Court, S. D., N. Y. (238 Fed. 231.)

The Guggenheim Exploration Co. and the American Smelting and Refining Co. were owned in 1905 by practically the same stockholders. By arrangement between the two, the American Smelters Exploration Co. was organized. The Guggenheim Co. turned over to it certain property which was valued by directors of the American Smelters Exploration Co. at \$49,000,000.00, and preferred and common stock to the aggregate par value of forty-nine million dollars was issued in payment therefor to the Guggenheim Company. The Guggenheim Company disposed of most of this stock almost immediately thereafter, but retained 112,490 shares of the common stock carrying it on its books at a nominal valuation of \$1.00 until 1911, when these shares were sold to the American Smelting and Refining Co. for \$6,749,400.00, or \$60.00 per share. No shares of common stock of the American Smelters Exploration Company had been sold on the market prior to this transaction. Consequently there was no indication of its value such as would have been given by market prices.

The government claimed that the difference between the book value of the stock and the sum received for it upon its sale constituted a profit upon which a tax was due, and the amount not having been included in the 1911 return of the company, this suit was commenced by the government for the recovery of the tax.

The court HELD that bookkeeping facts do not constitute income but only real facts do. The burden of proof was upon the government to show by fair preponderance of evidence that the stock was worth but one dollar (\$1.00). The enhanced value of property which accrues in the gradual increase in its value during a series of years prior to an effective date of an Income Tax Law does not become income, gains or profits taxable under such act. (Citing 236 Fed. 653.) The court decided that there is no income, gain or profit accruing to the defendant during the taxable year in question.

Additions and Betterments: Amounts expended for this purpose constitute an increase in capital investment and are not proper deductions. (Art. 118, Reg. 33.)

Expenses of administration of an estate, such as court costs, attorney's fees, etc., are chargeable against corpus of estate and are not allowable deductions in return of fiduciary in Form 1041. (T. D. 2090.)

Agents: Agents not acting in fiduciary capacity have no responsibility to the withholding of tax or making return of income turned over to resident aliens or citizens of the United States, but responsible representatives in charge of income of non-resident aliens must make return on Form 1040, revised, and pay tax thereon. (T. D. 2090.)

An agent in entire charge of property executing leases, collecting rents, and paying expenses and charges in connection with same out of such funds as collected, turning over net proceeds to his principal by virtue of power of attorney conferred upon him, is not a fiduciary within the meaning of the Income Tax Law. (T. D. 2135.)

There may be fiduciary relationship between an agent and a principal, but the word agent does not denote a fiduciary within the meaning of the Income Tax Law. (T. D. 2090.)

Real estate agents not required to deduct and withhold normal tax from rents collected, though amount be in excess of \$3,000. Agent stands in place of landlord, and receives money in the same capacity as the landlord would receive same. (T. D. 2090.)

Withholding Agent's Return When Form 1038 Filed: Withholding agent should make entries on Form 1042 from facts before him after receiving authority from collector for refundment of part of amount

previously withheld. When he has received notification of amount of tax to be refunded he has sufficient information to make correct entries. (T. D. 2135.)

Debtor May Appoint Withholding Agent: In matters pertaining to collection of tax upon filing with collector for the district a proper notice of such appointment. (Art. 38, Reg. 33.)

Paying Agent, Notice of Appointment of: This notice should be placed on file in office of collector of the district in which debtor corporation has principal place of business, and said collector should notify collector for the district in which withholding agent is located. (T. D. 2135.)

Withholding agent required to file return with collector for district where he is located, and not with collector for district in which debtor corporation is located. (T. D. 2135.)

Agent, Authorized, May Sign Certificate: Authorized agents may sign certificates for persons for whom they act, and withholding agents with whom such certificates are filed, if satisfied with identity of persons so signing, shall so mark certificate, giving name and address of person thus certifying. Certificates so verified may be accepted without question as to authority of such agent. (Art. 43, Reg. 33.)

Withholding Agents May Substitute Their Own Certificates for Certificates Attached to Coupons Presented for Collection: Responsible banks, bankers, and collecting agents receiving coupons for collections with certificates of ownership attached, may substitute for said certificates its own certificates Form 1058 for exemptions claimed or Form 1059 for exemptions not claimed, and shall keep a complete record of each transaction.

Annual List Return of Withholding Agent: Annual list return (Form 1013) in duplicate is required of debtor or withholding agent of normal tax withheld from interest payments made upon bonds or other similar obligations. (Art. 50, Reg. 33.)

In all cases annual list return required of withholding agents (of which monthly return will form a part as required by regulations) should be made and sworn to and filed as now required by existing regulations, and the jurat for annual return will cover entire returns thus made. (T. D. 1997.)

Withholding Agent not required by law to forward to collector tax withheld by him until after notice of assessment, and then payment should be made on or before June 30th of each year. (T. D. 2131.)

Tax Deducted by Collecting Agency, Debtor Does Not Again Deduct Tax, but in Lieu Thereof Delivers to Collector Certificates of Such Collecting Agency: A certificate, Revised Form 1002, should accompany coupon to debtor corporation in order that normal tax may not be withheld again, and should coupons pass through hands of other collecting agencies, debtor corporation, upon receipt of Form 1002, should treat such certificate as an exemption certificate. (T. D. 2135.)

Alien, Agent Of: Whether an individual or a corporation, for non-resident alien, should execute Form 1040, Revised, for the principal when he is liable for tax on income passing through agent's hands. (T. D. 2135.)

Alien Real Estate Agent who collects rents from property owned by non-resident aliens, pays for repairs and maintenance, and submits balance to his principal comes within (T. D. 2109) and (T. D. 2313) is required to make return on Form 1040, Revised, accounting only for funds payable by him to non-resident beneficiary.

Commission Retained by Life Insurance Agent on his own policy is held to be income accruing to agent. (T. D. 2137.)

Foreign Corporations and Fiscal Agents Defined: "Foreign corporations," as used in T. D. 1992, was intended to include municipal private corporations holding charters under laws of foreign countries, and "fiscal agents" are referred to as financial agents in ordinary sense,

upon whom law casts duties with reference to withholding tax, as are imposed upon withholding agents of domestic corporations.

When a foreign government has fiscal agents in the United States for the purpose of paying interest on its obligations, such agents will be charged with the duty of withholding and paying tax on such interest payments, except to extent of exemption claims.

When such foreign corporations have issue of bonds payable in the United States or without the United States at option of owner of bonds and where coupons from such bonds are presented for payment to fiscal agents in the United States of such foreign corporations, or to a bank, or collecting agency with ownership certificate attached, then in all such cases said coupons shall be treated as domestic items, and aforesaid fiscal agents charged with duties and responsibilities of withholding tax.

Where, however, such coupons are not presented with such ownership certificates attached, they shall only be received by licensed bank or collection agency, and when so received shall be treated as foreign items.

This ruling is made in explanation and amendment of T. D. 1992, and other applicable regulations. (T. D. 2006.)

Interest on Registered Foreign Bonds Payable in the United States to Fiscal Agents: Where foreign corporation has an issue of registered bonds the interest on which is payable to a fiscal agent in the United States, certificates of exemption may be filed with said fiscal agent in manner and form as prescribed by T. D. 1974, and payments shall be made in accordance with provision of same. (T. D. 1992.)

License Required For Branch Offices: Of Collecting Agents; When any person, firm or corporation shall have branch offices, and desire to collect foreign items through branch offices, the application for a license or licenses shall be made by person, firm or corporation through its principal office. Application for licenses in such cases shall be made to collector of internal revenue for district in which home office is located. (Art. 57 Reg. 33.)

Foreign Corporations Doing Business by Agent: Law provides that normal tax imposed by it shall be collected upon entire net income accruing to foreign corporations from business transacted or capital invested in this country. Such corporation may transact business or have capital invested in this country through an agent as though it were investing the same direct from its home office through branch office in the United States. An agent doing business in this country, buying and selling products of foreign corporations, is to all intents a branch of such corporation in transacting business in this country.

Buying and selling of products in this country through local agent on behalf of such corporation is transacting business within meaning of Federal Income Tax Law in this country, and such corporation will be required to make return of annual net income covering business so transacted. (T. D. 2137.)

When a foreign corporation sends a representative to this country to solicit business, merchandise thus sold to be shipped direct to consignee, held that such corporation is transacting business in this country.

A corporation thus conducting business in this country is required to make return even if such representative has only a mailing address in this country and returns should be made to Collector of District in which such representative has his mailing address. (T. D. 2161.)

Agricultural Organizations: Corporations owning sugar or other plantations, and disposing of the product thereof held to be operating for profit and not entitled to exemption as agricultural organizations. (T. D. 2090.)

Aliens, Resident: That place where an individual has his permanent home and principal establishment, and to which when absent he has intentions of returning; indicates permanency of occupation as

distinct from lodging or temporary occupation. **HELD:** that where for business purposes or otherwise an alien is permanently located in the United States; has there his principal establishment and there so occupied or employed, even though his domicile may be without the United States, he will be held within the definition of * * * "Every person residing in the United States, though not a citizen thereof." (T. D. 2242).

Aliens, Intending to Become Permanent Residents: Aliens coming to the United States with the intention of becoming resident citizens within the meaning of the Income Tax Statute, may establish that fact and have privilege of resident alien by filing with withholding agents a certificate in (Form 1078) under oath, certificate shall be filed by withholding agents with Collectors of Internal Revenue as justification for withholding on basis of "residence" in the United States. (T. D. 2242).

Alien Individuals, Non-Residents: An American Woman who marries a foreigner takes the nationality of her husband. (T. D. 2090).

Aliens, Royalties Received by Non-Resident: Royalties paid non-resident aliens under agreement of purchase of certain patent rights, payments being based upon quantity of goods produced by use of said patents; held to be income accruing to said individual by reason of property owned or business carried on within the United States; the corporation or individual purchasing and using patent rights required to make return of income therefrom on (Form 1040), revised, and pay tax, normal and additional assessed upon such income. (T. D. 2137).

Aliens, Interest on Bonds, Dividends: Income accruing non-resident aliens in the form of interest from bonds and dividends on the stock of domestic corporations is subject to the income tax imposed by the act of October 3d, 1913. (T. D. 2313).

Aliens, Non-Resident, Additional Tax: Non-resident aliens are subject to additional tax or sur-tax the same as a citizen of the United States or resident thereof.

Dividends on Stock of Domestic Corporations Received by Non-Resident Aliens: Dividends on stock of domestic corporations which pay tax on their net income are not subject to the normal tax when received by individuals. They are subject to the normal income tax of corporations and subject to the additional tax only as to individuals. (T. D. 2109.)

Aliens, Method of Claiming Exemption by Non-Resident: Foreign Dividends Payable in the United States; Exemption Certificate 1063 as provided in T. D. 1998 is made applicable to said persons in claiming exemption from income tax on dividends payable in the United States from stock of foreign corporations. (T. D. 2012).

Exemption May Be Claimed for Non-Resident Aliens by Responsible Bank: A certificate (Original Form No. 1071) is provided which may be executed by responsible banks or bankers, foreign or domestic, on behalf of non-resident owners of stock of foreign corporations for the purpose of claiming exemption. (T. D. 2030).

T. D. 2030 and all rulings heretofore made which are in conflict herewith are hereby superseded and repealed. (T. D. 2313).

A certificate will be provided to take the place of Form 1071. (Letter signed by Acting Commissioner David A. Gates, dated April 5th, 1916.)

For making effective the provisions of T. D. 2313 there are hereby provided for use after July 1, 1916, two certificates, to be known as Form * * * and Form 1071 Revised. Certificate Form 1071 Revised will be printed by the Government and furnished without cost. Banks desiring to furnish their own certificates may do so, but said certificates must conform in every description as used by the Government.

Aliens, Returns and Payment of Tax by Non-Resident: The liability to render personal returns on or before March 1st, next

succeeding the tax year, of annual net income from sources within the United States during the preceding calendar year, attaches to non-resident aliens. Therefore a return on Form 1040 Revised is required except where total tax liability has or is to be satisfied * * * by personal return on Form 1040 Revised rendered in their behalf. Returns should be rendered to the collector of the district in which non-resident alien carries on his principal business, or in the absence of principal business within the United States and in all cases of doubt, to the Collector of Internal Revenue at Baltimore, Maryland. (T. D. 2313).

Returns in Payment of Tax by Agents or Representatives: The responsible heads or representatives of non-resident aliens in charge of property owned or business carried on within the United States, shall make return on Form 1040 Revised, and shall pay all taxes assessed upon the income received by them in behalf of their non-resident alien principals. (T. D. 2109).

Aliens, Non-Resident Returns and Payment of Tax on Income From Domestic Corporations: Incomes derived by non-resident aliens from domestic corporations are subject to the Federal Income Tax, normal or additional, or both, as the case may be, and said tax shall be paid by owner of such income, a representative having control of the same. In all cases, the proper representative in the United States of said party, shall make returns to him on all such incomes coming into his control as provided by (T. D. 2109 and 2313): Provided, where all income shall have been paid over by the representative to his principal on or before September 8th, 1916, or where the stockholder of record shall not between September 8th and December 31, 1916, be in receipt or have control of income of his principal, said representative shall be relieved from paying said tax, and leaving the same a charge against his principal, to be collected by any means at the disposal of the Commissioner of Internal Revenue; but where such representative shall have custody or control subsequent to September 9th, 1916, he shall pay total tax due upon said income of said principal in his custody and control for the entire year 1916 and subsequent years.

When actual owner is non-resident alien individual, a return shall be made whenever the amount of the net income is over three thousand (\$3,000.00) dollars, and the custodian shall pay the tax found by such returns to be due, said return shall be made on income tax Form 1040. (T. D. 2313) is hereby amended accordingly. (T. D. 2402). (Under act of 1916.)

Agents, Responsibilities Of, for Non-Resident Alien Owners of Domestic Stock and Bonds: The custodian of securities is, for income tax purposes, the agent of the non-resident alien owner, and as such is responsible for a proper return of all the income that accrues on said securities. The agent is also charged with the responsibility of making complete return of all gains derived from sale, and being so charged, it is his duty to place himself in possession of all facts necessary for the termination of the amount of profit or loss which may arise from such sale.

Administrators, Executors or Trustees, Returns and Payment By: A fiduciary acting as trustee, executor or administrator, where there is only one beneficiary, he being a non-resident alien, return shall be made on Form 1040, Revised; but where there are two or more beneficiaries, being non-resident aliens, return shall be made on Form 1041, Revised; and a personal return on Form 1040, Revised, for each of them. (T. D. 2313).

If income accrues to a non-resident alien beneficiary, through the hands of trustees, they shall make and render a return of the net income for the person for whom they act.

Aliens, Non-Resident, Deduction at the Source on Miscellaneous Incomes: All parties in whatever capacity acting, having disposal or control of profits, gains and income of whatever kind, to a non-

United States, shall deduct from such income, regardless of amount, and pay to Collector of Internal Revenue authorized to receive the same, such sum as will be sufficient to pay the normal tax, and shall make an annual return on Form 1042. (T. D. 2109-2313).

Aliens, Non-Resident, Deductions for Expenses, Etc., May Be Claimed at the Source: Form 1008, revised, claiming the benefit of such deductions, may be filed by non-resident aliens or their representatives, with the withholding agent or Collector of Internal Revenue for the district in which the return is required to be made. (T. D. 2313.)

Aliens, Non-Resident, Ownership Certificates Shall Accompany Coupons, Etc.: For the purpose of declaring ownership, and recognized banks, and bankers, are permitted, when authorized by owners to sign the certificates with Forms and Instruction provided on the certificate.

Certificate 1004, revised, provided to be furnished with coupons detached from bonds or other obligations of domestic corporations owned by non-residents alien individuals or fiduciaries, is hereby revised to include firms and organizations; and a certificate to be known as Form 1004, revised November 22nd, 1916, is provided for use of non-resident alien individuals, firms, organizations or fiduciaries, for the purpose of declaring ownership of bonds, of domestic corporations, etc., and to be attached to interest coupons when presenting said coupons for premium. (T. D. 2399.)

Alien, Non-Resident Certificates May Be Printed in Two Languages: Certificates of ownership to be filed by non-resident aliens shall be printed in the English language, and directly underneath each line may be printed the text of said certificate in a foreign language.

In executing these certificates, amounts shall be filled in by using United States dollar values. These certificates shall be the same as prescribed by regulations of all certificates of ownership. (T. D. 1926.)

Alien, Non-Resident Endorsement by Responsible Agent Not Required: Reputable banks or collecting agents may execute certificate of ownership which is required to be filed by non-resident aliens, and the endorsement, "Satisfied as to the identity and responsibility of agents," is not required.

Non-Resident Alien, Specific Exemptions May Not Be Claimed at the Source By: A non-resident alien is not entitled to the benefit of the Specific Exemption provided in Section 7 of the Act dated September 8th, 1916, prior to the close of the tax year, and, therefore, no exemption certificate for the use of a non-resident alien is provided.

If subsequent to the close of the tax year, but not later than March 1st, of the next succeeding year, a return is filed, he may obtain a refund of taxes when his return shows his income to be less than three thousand (\$3,000.00) dollars. (Under act of 1916.)

Aliens, Non-Residents, Exemptions May Be Claimed by Responsible Banks: Responsible bankers may claim exemption on behalf of non-resident aliens holders of stock or bonds of corporations of foreign countries, for the purpose of claiming exemption from the income tax on dividends on such stock using Form 1071, modified, to be filed with foreign bonds when presented to paying agent in the United States. If the non-resident alien bond owner does not present his coupon for payment or collection to a bank or banker, but direct to a paying agent in the United States, such coupon should be accompanied by Exemption Certificate Form 1071, revised, so modified to show personal ownership of bonds.

Tax Deductible at Source on Interest from Domestic Obligations Accruing to Non-Resident Alien Partnerships: Under the act of September 8th, 1916, the normal tax should be withheld at source of income in the United States from income of non-resident alien firms, co-part-

nerships, joint stock companies or associations, and insurance companies not engaged in business or having any place of business in the United States.

The income withheld is such derived from interest on bonds, mortgages or deeds of trusts, or similar obligations, regardless of amount.

Including and from and after September 9th, 1916, and to and including December 31st, 1916, normal tax will be withheld from such income at rate of 1 per cent on amount thereof. Including and from January 1st, 1917, the normal tax will be withheld from such income at the rate of 2 per cent on the amount thereof. (T. D. 2374.)

Alien Non-Resident Authorization of Acceptance of Form 1001, Prior to January 1, 1917, When Stamped "Not Exempt": When certificate Form 1001, revised, has been executed by non-resident alien organizations, not having any place of business in the United States, to accompany coupons detached from bonds or obligations of domestic corporations, they may be accepted by debtor corporation prior to January 1, 1917, if words "not exempt" were stamped in bold type across face of certificate. Debtor corporations and withholding agents will be held liable under T. D. 2374, for normal tax, to be withheld as provided by Act of September 8, 1916. (T. D. 2377.)

Stock Owned by Non-Resident Alien Corporation or Firm Reported in Name of Citizen or Resident of the United States: When stock in domestic or resident alien corporation whose income is subject to normal tax is issued in name of another than non-resident alien corporation, dividends on such stock will not be subject to withholding of normal tax under provision of Section 13 (f), of act of September 8, 1916, except when debtor corporation or withholding agent have knowledge that actual owner of stock is non-resident alien corporation subject to withholding. (T. D. 2382.)

Stock, Record Owner Not to Make Return and Pay Tax for Non-Resident Alien Actual Owner of Partnership: When it shall appear from disclosure that actual owner is non-resident alien partnership, all certificates making such disclosure shall be transmitted to collector for information of Commissioner of Internal Revenue, but no return will be made for such partnership, and no amount retained from such income by representative of such partnership in the United States, until so instructed by Commissioner of Internal Revenue. (T. D. 2401.)

Stock, Record Owner to Make Return and Pay Tax for Non-Resident Alien Actual Owner of Corporation: Where actual owner is non-resident alien corporation, and record owner is an individual, firm or corporation in the United States, record owner will be held for income tax purposes to have receipt, custody, control and disposal of income, and will be required to make return for actual owner and pay such tax found to be due. Such return shall be made on Form 1031 (1030 or 1030-A), for insurance companies. (T. D. 2401.)

Returns and Payment of Taxes for Non-Resident Alien Corporations Receiving Income From Domestic Corporate Obligations Through Representative in the United States: Income derived by non-resident aliens from domestic corporations is subject to normal or additional tax, or both, as the case may be, and said tax shall be paid by proper representative having disposal of same.

In all cases proper representative in the United States for non-resident alien, with respect to such income coming into his custody, shall make return and pay tax thereon; however, where all income should have been paid over by representative to his principal on or before the first day of September 8, 1916, or where stock holder of record shall not between September 8, and December 31, 1916, be in receipt or have control of income of said principal, such representative will be relieved from paying such tax, leaving same a charge against non-resident aliens. But where such representative shall have in his custody or control subsequent to September 8, 1916, income of said principal, he shall pay

total tax due upon income of such non-resident alien in his custody and control for entire year 1916 and subsequent years.

When actual owner is non-resident alien individual, a return shall be made whenever amount of income is three thousand dollars (\$3,000) or over. (T. D. 2402.)

Exemption, Method of Claiming by Non-Resident Aliens on Foreign Dividends Payable in the United States: Exemption certificate 1063 as provided in T. D. 1998 is extended and made applicable to the use of such persons. (T. D. 2012.)

Exemption, Method of Claiming by Non-Resident Alien on Bonds When Presenting Coupons to Fiscal Agent in the United States: If non-resident alien bond owner does not present his coupons for payment or collection to a bank or banker, but direct to paying agent in the United States, such coupons should be accompanied by exemption certificate Form 1071 revised, so modified as to show personal ownership of bonds. (From letter signed by Deputy Commissioner L. F. Speer, and dated June 13th, 1916.)

Exemption May Be Claimed for Non-Resident Aliens by Responsible Bank: A certificate is hereby provided for the claim of such exemptions by above said parties on behalf of resident alien, owners of stocks and bonds of foreign corporations. (T. D. 2030.)

Certificate form 1071 revised will be printed on yellow paper for such purposes. (T. D. 2325.)

Liability of Foreign Fiduciaries for Non-Resident Alien Beneficiaries: In connection with income received from sources within the United States if a foreign trust company has charge of the estate or trust, the net income which is distributed annually or periodically among non-resident alien beneficiaries the fiduciary should execute a return on Form 1041, Revised, covering the total income of the estate or trust derived from sources within the United States, and a personal return on Form 1040 in behalf of each non-resident alien beneficiary, and in executing the latter returns the fiduciary may claim the benefit of the personal exemption to which beneficiary is entitled under the provision of Section 7 of the Act of September 8th, 1916.

If a fiduciary has charge of an estate in process of administration or settlement, or an estate or trust, the net income of which is held in trust for the benefit of unborn or unascertained persons, or for future distribution under the term of will or trust, the estate or trust will be considered a taxable entity and fiduciary will be required to render a return on Form 1040, Revised (October, 1916), covering so much of its total income as is derived from sources within the United States, and may claim an exemption of \$3,000 under provisions of Section 7.

No form of exemption certificate has been prescribed for the use of a foreign fiduciary, as it is not permitted under the law that such a fiduciary may assume liability for payment of income tax found to be due on income derived by the estate or trust from sources within the United States and subject to withholding of normal tax at source. (Form 1040, Revised, when presented for payment or collection by foreign fiduciary, and the interest paid on such coupons will be subject to withholding of normal tax at source, but the benefit of exemption provided by Section 7 after September 8th, 1916, may be granted to fiduciary when annual return or returns required of him can be properly filed. (Commissioner W. H. Osborn, December 28th, 1916.)

Refund to Non-Resident Alien at End of Year of Amounts in Excess of Liability Withheld at Source During the Year: To obtain a refund of tax withheld at source, where no tax liability exists by reason of personal exemption and allowable deductions, non-resident aliens are required by law to file or cause to be filed with collectors true and accurate annual returns of total income from sources in the United States, and these

returns will be examined in connection with corresponding withholding returns, so that instructions may be issued by this office to withholding agents to refund proper amounts, and for this purpose returns of aliens should have statement attached showing accurately amount of tax withheld with names and postoffice addresses of all withholding agents. (Acting Commissioner David A. Gates, January 25th, 1917.)

Income Tax Liability of Bank on Dividends Deposited Direct by Debtor Corporation to Credit of Non-Resident Alien Stockholders: This office acknowledges receipt of your letter of February 6th, 1917, repeated here: "Certain non-resident aliens have money invested in American securities; they have instructed the corporations in which their money is invested to have the dividends deposited to their credit in a certain banking institution. The banking institution receives these deposits, places them to the credit of the parties mentioned, and they are from time to time at the disposal of the non-resident aliens, the bank having no further control over them. The bank renders a statement periodically showing amounts received and the balance to the non-resident aliens' credit. Does this make the bank responsible for the filing of the income tax returns as agents for the non-resident aliens?" In reply you are advised that the transaction designated by you does not constitute the bank an agent for the non-resident alien for the purpose of rendering income tax returns. (Commissioner W. H. Osborn, February 8th, 1917.)

Payment of Tax by Non-Resident Alien: This office cannot authorize any departure from the requirements of the law, which are, that internal revenue taxes are payable in cash. Certified checks drawn in favor of collectors on national or state banks or trust companies located in cities where the respective collectors deposit their collections, or such "out of town" certified checks as can be cashed without expense to the government. (From letter signed by Deputy Commissioner G. E. Fletcher dated March 31st, 1917.)

Dividends Paid to Non-Resident Alien Partnerships as Record Owners of Domestic Stock: A non-resident alien partnership which has standing in its name a large number of stocks of United States corporations, which stocks are the property of its clients, and the dividends are mailed directly from this country by the paying corporations to the non-resident alien partnership and by it distributed to its clients, has no liability to execute certificates or to make returns but will be subject to being assessed for the tax on this income, unless it shows that the income is actually collected and paid to its clients. There, therefore, appears to be an indirect obligation to furnish this information.

Dividends paid on American stocks registered in the name of a non-resident alien partnership are not subject to the withholding of the normal tax at the source, under the provisions of the Income Tax Act of September 8th, 1916, unless an income tax ownership certificate, form 1087, was filed, evidencing the fact that the actual owner of the stock in question is a non-resident alien corporation, etc., having no office or place of business in the United States.

A foreign co-partnership deriving income from sources within the United States, is not itself subject to income tax under the provisions of the Act of September 8th, 1916, but each of its individual members is subject to that tax, upon his distributive share in such income, and, inasmuch as the dividends paid on domestic stock will, in the absence of a showing to the contrary, be held to be income to the registered owners of such stocks, the foreign co-partnership, to release its individual members from tax liability, should file with the debtor or corporation, or its duly authorized withholding agent, certificates, form 1087, disclosing actual ownership. (Deputy Commissioner L. F. Speer, April 7th, 1917.)

Withholding Tax at the Source on Stock Dividends Paid to Non-Resident Alien Corporations: While the Federal Income Tax Law of September 8th, 1916, Section 13 (f), specifically provides that dividends paid to non-resident alien corporations, joint-stock companies, etc., hav-

ing no office or place of business in the United States, are subject to the withholding of normal tax at the source, it does not prescribe a method to be followed in the withholding of that tax, and, therefore, the question as to how tax is to be withheld from a dividend paid up in stock or script, is one for adjustment between debtor corporation and recipient of dividends.

In view of the fact that domestic corporations will be held liable for normal tax at the rate of 2% on any dividend paid on stock registered in name of and actually owned by a foreign corporation, joint-stock company, etc.; having no office or place of business in the United States, the office deems it proper to suggest that in the case of a dividend paid in stock or script, the debtor corporation may protect its own interest by requiring the foreign stockholder to deposit with it, prior to the payment of dividend, an amount equal to the tax the former will be required to pay to the Federal Government; or the resolution providing for the dividend may be so drawn as to permit the debtor corporation in the case of a dividend paid to a non-resident alien corporation stockholder, to deduct from the surplus from which the dividend is to be paid, and to retain in its treasury an amount sufficient to meet the withholding requirements and issue stock and script in payment of the balance due on the stock held by such shareholders.

Each corporation so far as the law is concerned, must provide its own method for performing the duties required of it as a withholding agent in each case where that method is not specifically provided by the law. (Commissioner L. F. Speer, April 10th, 1917.)

Alimony, considered a personal expense, to person paying it, and not an allowable deduction in his return. (T. D. 2090.)

Appreciation of Value of Capital Assets Not Evidenced by Receipt of Cash or Equivalent: Losses due to fluctuation during a taxable year, in the value of capital assets, even though evidenced by book entries, do not constitute losses "actually sustained," as, within the meaning of the law (Section 2, Act of October 3rd, 1913) may be allowable deduction from gross income. Losses are not actually sustained as a result of a transaction until losses have been definitely ascertained, and the amount they represent has irredeemably disappeared from the assets of an individual or corporation.

Likewise and conversely, any appreciation in the value of assets due to appraisal, or adjustment and taken on the books, is held not to be income within the meaning of the law until such appreciation has been converted into cash or its equivalent. A book entry reflecting enhanced value of assets evidences an increase in net worth of corporation or individual for that year, an increase which under adverse conditions may disappear next year. An increase in the value thus evidenced is intangible, unstable, and is not such income contemplated by the Federal Income Tax Law for the purpose of tax.

Returnable and taxable income is that realized during the year. That which is evidenced by receipt of cash or its equivalent. Until any appreciation taken upon the books has been so realized, it will not be required in return as income.

In the event of sale of the assets, the increase in whose value it has been taken upon the books, the profit or income to be returned as a result of the sale will be determined upon the basis of the difference between the cost and the selling price of the assets.

Instructions herein before given will not in any way affect the "reasonable allowance for depreciation," any portion of the book value representing the value of "Good will" shall be eliminated from the calculation, and allowable depreciation being deductible, being an amount properly written off and charged against income to measure the loss due to wear and tear, and exhaustion of physical property.

Any ruling previously made by this office in conflict with holdings hereinbefore made are, superseded by this letter, if any returns, adjust-

ments, or assessments, made in accordance with previous rulings will in nowise be affected by the foregoing instructions.

Assessments on Stocks: Assessments on capital stock by corporation, regarded as an investment of capital, and not an allowable deduction in return, of the individual. (T. D. 2090.)

Voluntary Assessments Paid to Make Good Deficit: The amount paid by stockholders pursuant to a so-called voluntary assessment, are additional payments for the stock which they hold, and such payments are simply additions to the capital stock of the company. Since amounts paid on account of capital stock issued do not constitute income within the meaning of the Federal Income Tax Law, it is held that such payments represent voluntary assessments upon stock held by individual stockholders, and do not constitute income to be returned for the purpose of the income tax.

Special Assessments paid to local benefits in connection with real estate are held to be expenditures which add to the value of the property and should be capitalized, whether such expenditures were made prior to, or subsequent to the incidents of the tax; that is to say, such expenditures, no matter when paid, become in effect a part of the property.

In the case of a holding or developing company which has not yet reached the stage of having any income of consequence resulting from its corporate operations, the excess of the carrying charges over the incidental income received may be added to and made part of the cost of the property.

As a general proposition involving acquirement and holding of property for further sale acquired prior to incidents of tax from which there is but a normal income, insufficient to meet carrying charges it is proper to add to the original cost of the property the carrying charges of interest, insurance and taxes actually paid and from that amount deduct the incidental income which may have been received between the date of purchase and date of incidents of tax. The result thus shown will be the cost of the property or amount to be excluded from proceeds when sale is made.

Assessment and Payment of Tax, Amended Return Not Required When Audit Reveals Necessity for Further Tax: Hereafter where an individual has been found subject to further tax as a result of an audit by the collector an amended return will not be required.

In cases where further tax is to be assessed collectors will be advised by letter from the Treasury Department of the amount of further tax to be assessed and reasons for making the same.

Notice of Assessment May Lawfully Be Given by Mail: Notice of assessment (Form 17) may lawfully be given by mail and if so given presumed to have been received. The burden upon taxpayer to prove contrary in order to avoid penalty. (U. S. v. Gen. Inspection & Loading Co., 204 Fed. 657.)

Insurance Companies, Life: Life insurance companies are authorized to omit from gross income such portions, if any, of actual premiums received from any individual stockholders as shall have been paid back or credited to policy holders, or as an abatement of his premium. In so far as "deferred dividends" payable at a stated period represents a "portion of any actual premium received," such deferred dividend may be included in amount to be omitted from gross income for year in which they were actually paid back, credited to policy holder, or applied as an abatement of premium. In the case of dividends credited or apportioned annually to policy holder, only aggregate amount so actually credited or apportioned during premium paying periods, and not any accretion thereto, can be excluded from gross income. In case of whole life or five-year distribution policies, deferred dividends may be excluded from gross income to the extent they are paid back, or credited to the insured. (Art. 100, Reg. 33.)

Dividends paid by mutual life insurance companies, representing the excess loading of premiums over cost of insurance and used by policy holders to reduce subsequent premiums held not "income receipts," and not, therefore, subject to taxation under corporation tax, act Sec. 38. (**Mutual Benefit Life Ins. Co. v. Herold, 198 Fed. 199.**)

Insurance Companies, Foreign Assessments: In the case of assessment insurance companies, the actual deposits of sums paid to territorial offices pursuant to the law as additions to guarantee of reserve funds shall be treated as payments required by law to reserve funds.

Tax: Assessment for Fiscal Year: In case of corporations making returns for fiscal year, the assessment shall be made and notice given on or before the expiration of ninety days from date when returns are required to be filed. (**Art. 177, Reg. 33.**)

Notice of Assessment and Demand by Collector for Tax, Penalty and Interest: When assessment has been made, collectors will, on receipt of their return list, at once issue preliminary notices of assessments (Form 627), and where in any case the tax assessed is not paid before 30th day of June, or in case of corporations designating their own fiscal year within 105 days following the date on which return shall have been filed, notice and demand (Form 17) should be at once issued, and unless the tax in such case is paid within ten days after such notice, general demand for tax, penalty and interest (Form 21) should at once be issued. Immediate notice and demand (Form 17), will, however, be served in case of failure to file return within specified period. (**Art. 197, Reg. 33.**)

The necessity of issuing Form 17 is two-fold: First, to determine date when 5 per cent penalty accrues and interest at 1 per cent per month begins to run, and, second, to complete the government lien on property belonging to the taxpayer.

In special excise and income tax assessments a notice on Form 647 is required to be given in all cases where required return is filed in due time. This, however, is simply a preliminary notice of assessment, to be followed, in case of non-payment, by formal notice and demand if the law clearly contemplates and which court holds to be necessary before the legal taxpayer becomes chargeable with penalty and interest. (**T. D. 1995.**)

Taxes, Suits to Restrain Assessment or Collection Thereof: "No suit for the purpose of restraining the assessment or collection of any tax shall be maintained in any court." (Section 3224, Rev. St.) See *Dodge v. Wm. H. Osborn*, Commissioner of Internal Revenue, 240 U. S. 118, February 21, 1916.)

Profit from Sale or Disposition of Capital Assets: For purpose of determining income resulting from sale of capital assets and amount to be accounted as income under this act, there shall be included any and all profits resulting from such sale. (**Art. 108, Reg. 33.**)

In ascertaining net income derived from sale of taxable assets, if such assets were acquired subsequent to January 1st, 1909 (on March 1st, 1913), the difference between selling and buying price will constitute an item to be added or subtracted from gross income according to whether selling price was greater or less than buying price. (**Art. 109, Reg. 33.**)

Appreciation in Value of Capital Assets Not Evidenced by Sale or Other Disposition Thereof: Referring to T. D. 2005, it will be observed that losses due to fluctuation during taxable year in value of capital assets, even though evidenced by book entries, do not constitute "actual losses sustained" as, within meaning of the law (Section 2, Act of October 3d, 1913), may be allowably deducted from gross income. Losses are not actually sustained until, as a result of a completed transaction such losses have been definitely ascertained and the amount they represent has irredeemably disappeared from assets of individual corporation.

Likewise and conversely any appreciation in value of assets due to appraisal or adjustment and taken up on the books of individual or corporation is held not to be income within meaning of the law until such appreciation, as a result of closed transaction, has been converted into cash or its equivalent; that is, have been realized as an addition to and part of tangible assets of individual or corporation. A book entry reflecting only an enhanced value of assets during year evidences an increase in net worth of corporation or individual for that year, which may disappear under adverse conditions the next year. An increased value thus evidenced is intangible and is not income as contemplated by the income tax law.

Returnable and taxable income is that actually realized during the year evidenced by receipt of cash or its equivalent. Until appreciation taken up on the books has been so realized it is not required to be returned as income. It should be understood, however, that in the event of sale of assets, increase in whose value has been taken upon the books, the profit or income to be returned as a result of sale will be determined upon basis of the difference between cost and selling price of assets; that is, actual values and not book values.

Instructions hereinbefore given will not in any way affect "reasonable allowance for depreciation, if any," which the law authorized as deduction from gross income, provided that in computing the same any portion of book value representing "good-will" shall be eliminated from calculation, an allowable depreciation being an amount properly written off and charged against income to measure due to loss, wear, tear, and exhaustion of physical property.

All rulings previously made by this office in conflict with the holdings hereinbefore made are superseded by this letter, but any returns, adjustments, or assessments made in accordance with previous rulings will in nowise be affected by foregoing instructions. (**Letter to Collectors, August 14th, 1914.**)

Agricultural and Horticultural Associations: Agricultural and Horticultural Associations specifically enumerated as exempt are held to be such associations as County Fairs, or like organizations, not themselves engaged in such pursuits, but which, by means of awards, etc., are intended to encourage better production and no part of whose income inures to the benefit of any private individual. (**T. D. 1737.**)

Associations, Fruit Growers: Whose purpose is to promote mutual benefit of their members in marketing their products, and not organized for profit, having no capital stock represented by shares, whose income is derived wholly from membership fees, necessary to meet expenses, are horticultural societies within meaning of law and not subject to make return or pay tax. (**T. D. 2090.**)

Building and Loan Associations, Domestic: A domestic Building & Loan Association is held to be one organized pursuant to laws of the United States, or of a State or Territory thereof, or under laws applicable to Alaska or District of Columbia. Mutuality in operation and in distribution of profits and benefits is essential to exemption. An association issuing different classes of stock upon which different rates of interest are guaranteed or paid, does not come within exempted class. (**Art. 87, Reg. 33.**)

Under the Corporation Excise Tax Law it was decided that a Building & Loan Association is exempt though it issue both prepaid and installment stock. (*Harold v. Park View & Loan Association*, 210 Fed. 577) but that a Building & Loan Association issuing Preferred Stock is not exempt. (*Pacific Building & Loan Association v. Hartson*, 201 Fed. 1011.)

Private Banks, Income From: In case of banks which have the form of corporations and held to be associations within the meaning of the Federal Income Tax Law, it is not the purpose of this

office to assess against such banking association and then also against the individual members. Income which the members of the association receive from the bank because of their investment therein will be considered dividends. (T. D. 2152.)

Bank Owned by Individual or Partnership: Where it is clearly shown that a bank is owned by one man, it is evident such bank is not an association within the meaning of the Federal Income Tax Law, and therefore will not be required to make return such as corporations and associations are required to make, but if individual owners have net incomes of three thousand dollars (\$3,000.00) or more, he is required to make a return on Form 1040, showing in such return income received from all sources. (T. D. 2137.)

Banks, Private, which have no formal organization, but in the name of individuals who compose the firm, as John Smith & Co.; held to be co-partnerships, and as such not required to make return. In such cases, individuals who compose the firm, if they have net incomes in excess of three thousand dollars (\$3,000.00) are required to make returns on Form 1040. (Under act of 1916.)

Private Banks as Partnerships: Private banks having no formal organization and transact business in the name of individuals who compose the firm, as John Smith & Co., held to be co-partnerships, and as such are not required to make returns. In such cases individuals who compose firm, if they have a net income in excess of \$3,000 will be required to make returns on Form 1040, accounting for the earnings accruing to them from such bank.

Interest on Bank Deposits: Interest on bank deposits, or on certificates of deposit, whether paid or accrued and unpaid, must be included in return. (Article 67, Reg. 33.)

Interest on Bank Accounts should be returned as income, for the year in which credited.

Banks, Bankers, Trust Companies and other Banking Institutions receiving deposits of money are not required to withhold at source normal tax on interest paid or accruing to depositors, but all such interests, whether paid or accrued and unpaid, must be included in annual income return of person entitled to receive such interest, whether on open account or on certificate of deposit. (Art. 67, Reg. 33.)

Banks Receiving for Collection Interest Orders, of Checks Bearing Endorsement: Collecting agents receiving for collection interest orders or checks bearing endorsement may present said interest orders or checks for collection without requiring certificate of ownership therewith. (T. D. 1974.)

Private Banks: Private banks which have form of corporate organizations, elect officers and board of managers, have distinctive name and distribute their earnings upon basis of amount of capital invested by members or owners, are held to be associations and should make return in their organized capacity. (T. D. 2137.)

The holders of stock or owners of bank, exempt from normal tax to extent of dividends which they receive, from such private banks as make returns in their organized capacity and pay income in accordance therewith. Individual owners not required to make return as income for purpose of normal tax upon any dividends from bank which pays tax on its earnings, but for purpose of super tax dividends, should be returned as income. (T. D. 2137.)

When it can be clearly shown that a private bank is owned by one man, it is evidence that such bank is not an association within meaning of income tax law, and therefore such bank will not be required to make return as association, but if individual owner has income of \$3,000 or more, he will be required to make return on Form 1040. (T. D. 2137.)

Gross Income of Banks and other financial institutions consist of revenue derived from operation of the business, including income, gains, or profits from all other sources, as shown by entries on books of accounts, with calendar or fiscal year for which return is made. (Art. 96, Reg. 33.)

Dividends on Stock of Federal Reserve Banks Are Exempt: Income or dividends on the stock of Federal Reserve Banks is exempt from Income Tax. (Extract from Federal Reserve Bulletin of April 1st, 1916.)

Bank Guaranty Fund: Banking corporations, which, pursuant to laws of the state, in which they are doing business, are required to set apart, keep and maintain in their bank the amount levied assessed against them by state authorities as a "depository guaranty fund," may deduct from their gross income the amounts so set apart each year to this fund, provided that such fund is set aside and carried to credit of the State Bank Board, or duly authorized state officers, and may be withdrawn by such board or state officers upon demand for reimbursing depositors in insolvent banks, provided no portion of the amount thus set aside and credited is returnable under existing laws of the state to the assets of the banking corporation. In such cases the amount of guarantee fund thus levied against banking corporation and so set apart, is not longer an asset of bank, but a nature of tax "imposed by authority of the state," and as such authority of the state, is deductible from gross income of banking corporation. (T. D. 2152.)

Taxes assessed against the stockholders of a bank and paid by bank itself in behalf of the stockholders do not constitute an allowable deduction from gross income of bank, but do constitute an allowable deduction in the return of the individual. The amount of taxes so paid should be included in his return as income, said amount being considered additional dividend to amount of taxes paid. (T. D. 2135.)

The capital stock outstanding of a banking corporation is the personal property of individual stockholders. Hence, any tax paid on the value of this property is a liability of the owner, on the requirement of a state law when a bank shall pay for the stockholders cannot be considered authority under which the bank may deduct from its gross income the taxes so paid.

If a banking corporation in the return of annual net income for the year 1913 prior years afterward deducted from gross income amount of tax paid upon value of the capital stock outstanding and in the hands of the stockholders, such corporations are required to file minute returns in which amount of said tax so paid shall be eliminated from deductions, and assessment will be returned accordingly. (T. D. 2161.)

Beneficiaries, Dividends, Received Through Fiduciaries: Dividends in the hands of fiduciaries and belonging to the beneficiaries are not subject to the normal tax, but subject to the additional tax to the beneficiary whenever the beneficiary's income from all taxable sources is in excess of \$20,000.00. (T. D. 2090.) (Under act of 1916.)

Individual Return by Beneficiary: A beneficiary is liable for normal tax upon amount of net income derived from all taxable sources through a fiduciary, less amount of exemption claim, and amount of tax withheld at source, and is also liable for additional tax upon income in excess of twenty thousand (\$20,000.00) dollars. (T. D. 2090.)

Taxpayer is required to account only for the actual amount received from fiduciary.

Unless beneficiary is under some disability which requires fiduciary to act, beneficiary will make own return and account for income tax upon his net income. (T. D. 2090.)

Beneficiary shall not be required to pay again the normal tax on amount on which tax has been paid when such amount was distributed. (T. D. 1906.)

Board, Lodging, Etc., Received in Lieu of Cash for Rent: Board, lodging or other considerations received in lieu of rent is considered income equal to the amount of the indebtedness, in payment of which it is received, and should be returned as income by its recipient. (T. D. 2135.)

Bond May Be Required By Commissioner of Internal Revenue Before Issuing License: Where commissioner is not sufficiently informed as to responsibility of applicant, or when in any case he deems it advisable, he may, upon recommendation of collectors, require of applicant a bond, in duplicate, with satisfactory sureties, and a penal sum equal to estimated amount of tax to be withheld by such applicant during any one year. (Art. 56, Reg. 33). Minimum penal sum to be one thousand (\$1,000.00 dollars, and maximum not in excess of one hundred thousand (\$100,000.00) dollars.

One of the duplicate copies of bonds shall be retained in office of collector of internal revenue with whom filed, and the other forwarded to the Commissioner of Internal Revenue at Washington, D. C. (T. D. 1909.)

A form of bond to be given in such cases will be furnished collectors upon application for same. (Art. 56, Reg. 33.)

Bond For License Must Be Renewed Annually on or Before January First: Bond, if required, must be filed for calendar year 1914 and for each calendar year thereafter. All bonds must be renewed or new bonds furnished on or before January 1st, of each successive year. (T. D. 1909.)

License Revoked For Failure to Renew Bond: Failure to give a renewed bond in cases where bond is required will automatically revoke license. (T. D. 1909.)

License Issued Without Bond: When licenses are issued without bond, collector will each year inquire into, and satisfy himself to financial responsibility of licensee. (Art. 56, Reg. 33.)

Bond Amount Required For Collecting Agency Having Branch Offices: The bond in such cases shall be based on total amount of business transacted by both home office and its branches. (T. D. 1909.)

Fidelity Bond, Premium On: Where an employee is required to furnish bond incident to his employment, and pays premium on such bonds, such expense constitutes an allowable deduction in computing net income. (T. D. 2090.)

Bonds Containing Tax-Free Covenant Clause: The stipulation in bonds guaranteeing non-assessability against them is a contract between the corporation and the bondholder as far as the income tax law applies and are no different for this purpose than bonds carrying no such clause. Debtor corporation or its duly authorized withholding agent will be held responsible for normal tax when no exemption is claimed. (T. D. 1948.) . (T. D. 2090.)

Bonds; Apportionment of Losses Due to Sale Below Par: Bonds disposed of for a price less than par, and are redeemable at par; it is held that because of fact that bonds may be redeemed at their face value, the loss sustained by reason of their sale for less than their face value may be pro-rated over the period of life of the bond. (Art. 135, Reg. 33.)

Bonds, Loss Incurred by Retirement of: If bonds were issued at par, then corporation may deduct difference between par and price at which purchased for retirement.

If bonds were issued at a premium, and such premium accounted for as income for year and which issued, then difference between par and the purchase price may be deducted as a loss, but if premium at which bonds were issued had not been carried into income account the loss to be claimed should be the difference between the price at which bonds were issued and the purchasing price.

In event that bonds were issued at a discount, and discount was charged against earnings of year in which issued, the difference between purchase price and par value may be considered loss, but if discount on bonds was pro-rated over life of bond and annual proportion charged against annual income, amount to be charged off as loss for year, in which bonds were purchased for retirement, should be the difference between price at which bonds were issued and purchase price minus an allowance for sums charged off annually on account of pro-rated discount on such bonds. (**Acting Commissioner J. E. Fletcher, March 3rd, 1915.**)

Bonds, Retirement of: Where bonds under contract provision are retired with interest period and prior to expiration of full term of bonds, ownership certificates are required, and should cover that part of interest period between beginning of such period and date of retirement. (**T. D. 2090.**)

Bonds Purchased by Trustee Under Mortgage Deed of Trust, Not Required: It is held in the case where corporate bonds are purchased "by trustee under mortgage deed of trust out of money from sinking fund when bonds are not retired or cancelled but held alive and interest continued on coupons, interest paid to trustee being held for account of corporation issuing bond" that trustee merely acts as agent for debtor corporation, and that Corporation itself or trustee if authorized to act as agent, should execute income tax certificates, (Form 1001, Revised) to accompany coupons detached from bonds. It is held that if legal title to bonds rest with trustee he should execute exemption certificate (Form 1015, Revised) or (1019, Revised) to accompany coupons detached from bonds and presented for payment. (**Commissioner W. H. Osborn, December 6th, 1916.**)

Bonds, Each Issue Require Separate Certificates of Ownership: Certificates are made on prescribed forms by each owner of bonds, for coupons or interest orders for each separate issue of bonds or obligations of each debtor.

Certificates to be Executed by Individuals to Accompany Coupons in Case of Registered Bond: If owners of bonds are individuals, who are citizens or residents of the United States, ownership certificates shall accompany coupons. Or the interest on registered bonds shall be filed with payor, and certificates shall describe bonds and show amount of coupons attached and due such owner, and name and address of owners, and if registered, names other than owners, such names and addresses should also be given. Certificates shall also show whether claim is made for exemption or not, and must be signed by claimants, using their ordinary business signatures. Also postoffice and street address of claimants, and date signed. (**Art. 42, Reg. 33.**)

Bonds, Purchase and Sale of Between Interest Dates: Where such a bond is purchased, seller is not required to execute an ownership certificate, but such certificate will be required from purchaser of bond when coupon is attached and presented for payment.

Bonds, Foreign Owned, Belonging to American Citizens or Residents: Where certain American bonds which are property of Swiss citizens, but which belongs to an American citizen, coupons, when making collections, should be accompanied by certificate of ownership signed by or in behalf of the person entitled to receive the income.

Tax Previously Withheld May Be Paid to Creditor on Filing Certificate of Exemption in Case of Interest on Registered Bonds: Where, because of failure to file certificates claiming exemption, in compliance with the regulations, interest has been withheld for payment of normal tax, debtors may, upon filing proper certificates as provided in Art. 42 to extent of exemption claimed, release and pay amount of such income withheld. (**T. D. 1974.**)

Tax Withheld on Salary and Bonus: If an employee's total com-

pensation is paid to him at one time withholdings should occur at that time; and both the company's withholding return and employee's individual return should take consideration of this item for the year in which it is paid. Where part of the compensation is in the form of monthly salary and part in the form of a bonus not fixed until after January 1st of the succeeding year, the two parts of any one year's compensation cannot be considered together for the purposes of withholding the tax and making returns; but the fixed salary of one year should be considered together with the bonus received on or after January 1st of that year. Thus, if the services were received in the year 1914, the employee's compensation would be liable to withholding whenever fixed salary in bonus paid on or after January 1st, 1914, amounted to \$3,000, subject to the exemptions claimed under the law. The bonus to be paid on or after January 1st, 1915, belong to the tax year 1915, together with the fixed salary received during 1915. (T. D. 2135.) (Under act of 1916.)

Bonus is considered taxable income: Special payments by corporation as extra compensation to its employees may be deducted from gross income if it is shown that compensation is paid for services rendered. If such compensation is a gratuity or voluntary payment for which no service is rendered, the amounts so paid are not deductible. (T. D. 2152.)

Salaries Paid by Exempt Organizations are subject to the Income Tax Laws and should return as income by the individuals.

Living Quarters as Part of Salary: Where living quarters are furnished in addition to salaries the rental value of same is regarded as income subject to tax. (T. D. 2090.)

Gifts, Gratuities or Bonuses to Employees: Gifts or gratuities to employees in service of a corporation are not properly deductible in ascertaining income. (T. D. 2090.)

Bookkeeping, System Required: No particular system of bookkeeping or accounting will be required by this department. However, the business transacted by corporation must be so recorded that each and every item set forth in return of annual net income may be readily verified by examination of the books of account. (Art. 182, Reg. 33.)

Corporations' Books: Must Confirm Annual Returns: The books of a corporation are assumed to reflect the fact as to its earnings, income, etc. Hence, they will be taken as the best guide in determining net income upon which tax imposed by this act is calculated. Except, as the same may be modified by provisions of the law, wherein certain deductions are limited, the net income disclosed by books and verified by the annual balances, shall be the same as that returned for taxation. (Art 183, Reg. 33.)

Corporations, Domestic: Return of Whose Books Are Kept Abroad: In case of a domestic corporation whose books of account and other data are kept in foreign countries, return should be made to the Collector of Internal Revenue of the district in which they have their principal office in this country. Otherwise, return of annual net income of said corporation should be made to the collector of the district in which are located the statutory offices of the corporation. (T. D. 2137.)

Corporation Keeping Books in Accordance With Standard Systems of Accounting Make Their Returns on Basis on Which Their Books Are Kept, Provided the Books so Kept and Returns Made Reflect the True Net Income of the Corporation of Each Year: Under provision Sub-Paragraph (d) of Section 13 of Title (1) of the Act of September 8th, 1916, it will be permissible for corporations which accrue on their books monthly or other stated periods, amounts sufficient to meet fixed annual or other changes, to deduct from their gross income so accrued, provided such accruals approximate as nearly as possible the actual liabilities for which the accruals are made, and provided that in cases wherein

deductions are made on the actual basis as hereinbefore indicated, income from fixed and determinable sources accruing to corporations must be returned, for purpose of the tax, on the same basis.

In cases wherein pursuant to consistent practice of accounting of corporations, or pursuant to requirement of Federal, State or Municipal authority, corporations set up and maintain reserve to meet liabilities, the amount of which on the date of payment or maturity of which is not definitely determined, or determinable, at the time the liability is incurred, it will be permissible for the corporations to deduct from their gross income the amounts credited to such reserves each year, provided that amounts deductible on account of reserves shall approximate as near as can be determined the actual amounts which experience has demonstrated will be necessary to discharge the liabilities incurred during the year, and for the payment of which addition to the reserves were made; and provided if it shall be found that the amounts credited to any such reserve is in excess of the reasonable or probable needs of the corporation to meet and discharge the liabilities for which the reserve is credited, excess of such reserves shall be at once disallowed as a deduction and restored to income for the purpose of the tax; and provided further, that in no event will sinking funds or other reserves set up to meet additions, betterments, or other capital obligations, constitute allowable deductions from gross income.

This ruling contemplates that the income in authorized deductions shall be computed and accounted for on the same basis, and that the same practice shall be consistently followed year after year. Amounts paid up in discharge of any liability or obligation for which a reserve has been set up, and hereinbefore outlined, will, when paid, be charged to the reserve created to meet it, in so far as such reserve is sufficient to meet the liability, provided always that the liability is of a character, which constitutes an allowable deduction within the meaning of the law.

If upon investigation it shall be found that returns made upon basis of accruals and reserves do not reflect the true net income, the corporation so failing in this way to return the true net income will not thereafter be permitted to make its returns upon any basis other than that of actual receipts and disbursements.

The reserves contemplated by the foregoing ruling are those reserves only which are set up to meet some actual liability incurred, the amount necessary to discharge which cannot at the time be definitely determined and not the reserves to meet losses contingent upon shrinkage in values, losses from bad debts, capital investments, etc., which losses are deductible only when definitely determined as the result of a closed or completed transaction, and are charged off. (T. D. 2433.) January 19th, 1917.

Accounting for Dividends Distributed by a Corporation Which Had Surplus or Undivided Profits, on March 1st, 1913: Under title (1) of the Act of September 8th, 1916, any distribution made or to be made by a corporation out of its earnings or profits accrued since March 1st, 1913, and payable to its stockholders, whether in cash or in stock of the company, will be subject to the income tax for the year in which received.

In each case where dividends are declared and paid out of surplus of profits earned prior to March 1st, 1913, the corporation should specifically inform the stockholders that dividends were declared and paid out of such surplus and profits, and proper entries must be made on books of the corporation showing from what surplus or earnings the dividends were paid. It is immaterial to this office whether dividends are paid out of current earnings or surplus acquired prior to March 1st, 1913, but for the purpose of the Federal Income Tax, it is necessary this office be fully advised in the return of annual net income whether or not the dividends received was paid out of surplus earned prior or subsequent to March 1st, 1913. (Acting Commissioner David A. Gates, and dated January 23rd, 1917.)

Calendar Year: It is noted that some corporations are apt to mis-

understand the rulings of this office relative to establishing a fiscal year as basis of its return of annual net income. In this connection you are requested not to accept a return made on any basis other than the calendar year ending Dec. 31st, unless the corporation filing such return has properly established a fiscal year. (Letter No. 1148 to collectors.)

Capital Stock, Proceeds of, Sale of, Are Not Income: The amount received by a corporation for the original issue and sale of its capital stock is held to be capital of the corporation. In cases where the stock, as originally issued, is sold at prices at greater or lesser than par value, neither premium nor discount will be taken into account in determining net income of corporation for year in which stock was sold. This is purely a capital transaction and income is neither increased nor decreased by reason of sale, per se, of stock at a price greater or less than its par value (T. D. 2090.)

Capital Stock: Outstanding, Paid Up. Full amount of stock, as represented by the par value of the shares issued is to be regarded as paid up capital stock, except when such stock is assessable on account of deferred payments, or payable in installments, in which case the amount actually paid on such shares will constitute the actual paid up capital stock of corporation. (Art. 95, Reg. 33.)

In making return of annual net income for purpose of income tax, every corporation in making such returns must report under item 1 of return form the total par value of its stock, both common and preferred, outstanding, at the close of the year.

Stocks outstanding at the close of the year and upon the basis of which dividends are or may be paid was held to be paid up capital stock within the meaning of the law. For this purpose, it is immaterial whether stock be paid for in cash or other assets. The fact that notes are given in payment of stock issued and that notes have not been paid in full at time returns are made is immaterial. (T. D. 2137.)

Capital Stock Paid Up and Outstanding When Shares Are Without Par Value: "Paid up capital stock," as used in this act, is held to mean that amount of capital paid in and for which certificates of shares are issued. For the purpose of the act, it is not essential that shares, when issued, shall have set out therein a nominal or par value. Hence, for purpose of the act, it is held that shares of stock issued, whether with or without a par or nominal value, are "paid up capital stock" within meaning of law; and the amount to be set forth in the return as one of the determining elements in computing the amount of interest which may be allowably deducted is the amount of capital actually received by corporation and for which shares are issued.

In case of shares of stock issued with a par value fully paid up and non-assessable, the par value of all such shares so issued is paid up capital stock of corporation.

In case of shares of stock issued without par value the amount of capital actually received and for which such shares are issued is paid up capital stock.

And in the case of capital stock issued with par value, so in the case of stock issued without par value, the amount of the "paid up capital stock," for the purpose of this act should not be increased except as new capital is paid in and for which additional shares are issued. In cases wherein shares of stock are issued without par value, such stock is obviously common stock. If it should occur that such shares are issued as bonuses in connection with shares of preferred stock, which must have a par or nominal value, and entire capital paid in is represented by entire value of preferred stock, then and in that case the "paid up capital stock" for all purposes of the income tax law, will be par value of preferred stock.

If both common and preferred stock are issued for a cash or other equivalent consideration, the "paid up capital stocks" within meaning of

law will be the par value of preferred stock plus amount actually paid in on shares issued without par or nominal value.

It is therefore held that corporations whose shares of stock are issued without par value has a "paid up capital stock" within meaning of law, equal to the amount paid up in for such stock, and it will be authorized to compute its interest deduction in accordance with the rules set out in the law for corporations having the "paid up capital stock" being in such cases the actual paid in capital for which shares are issued. (Acting Commissioner G. E. Fletcher, January 13th, 1916.)

Cemetery Companies: Operated exclusively for mutual benefit of members are exempt. Cemetery Companies operating for profit are liable to tax. (Art. 9, Reg. 33.)

Maturity of Coupons Require Certificate of Ownership: A certificate of ownership should be filed for each maturity of coupons. (Deputy Commissioner L. F. Speer, December 7, 1914.)

Endorsement Not Required, on Back of Certificates: The person first receiving coupons or interest orders for collections is no longer required to endorse same, as provided in T. D. 1887. (Deputy Commissioner L. F. Speer, September 18, 1914.)

Certificate, Address on: Banks should exercise care in securing full post office address on certificates. When no street address is given, this office will assume it not necessary, and certificates will not be returned for correction.

Certificates Executed by Domestic Corporations, Exempt Organizations, etc., to accompany coupons filed with debtor: If owners of bonds or corporations, stock companies, associations, or insurance companies organized in the United States, no matter how created, are either taxable or exempt from taxation, debtor not required to withhold or deduct tax upon income derived in case of interest on registered bonds, provided coupons from such bonds shall be accompanied by certificates of ownership which shall be filed with the debtor represented for payment.

Said certificate should be made on revised Form 1001, signed in name of organization (stating place of business), by some principal officer of said corporation, duly authorized to sign same, which must be properly dated. (Art. 45, Reg. 33.)

Debtor Must Obtain Certificate of Ownership or Deduct Tax: Ownership certificates must be obtained by the debtor corporations and withholding agents in all cases as required by the regulations. (Letter No. 1242 to collectors.)

Tax on Domestic Bonds, etc., Will Not be Deducted if Certificate of Exemption Filed: Under act of September 8, 1916, no tax is to be withheld at source from income of non-resident alien, firms, corporations, joint stock companies, insurance companies, not engaged in business nor having any place of business within the United States.

The income of such non-resident alien associations, etc., subject to withholding provision is that derived from interest on bonds, mortgages, deeds of trust, or similar obligations of domestic or resident debtors, regardless of amount.

Including and from and after September 9, 1916, and to and including December 31, 1916, normal tax should be withheld from such income at the rate of one per cent (1%) on amount thereof. Including and from and after January 1, 1917, normal income tax to be withheld at the rate of two (2%) per cent.

To enable debtors to distinguish between non-resident alien corporations, etc., which have no place of business within the United States, and those that have, Form 1086 is provided for this purpose. (T. D. 2374.)

Ownership Certificates for Non-Resident Alien Firms to be Used With Coupons Detached From Bonds of Domestic Corporations, etc.: Certificate 1004 should be used with coupons detached from bonds or other obligations of domestic corporations owned by non-resident alien individuals or fiduciaries, is revised to include firms and organizations,

and certificate Form 1004, revised November 22, 1916, is provided for use of non-resident alien individuals, firms, organizations, etc., for purpose of declaring ownership of bonds of domestic organizations and to be attached to interest coupons when presented for payment. (T. D. 2399.)

Certificates to be Executed: By foreign exempt organizations, when presenting for payment coupons detached from bonds issued by domestic corporations, should have attached thereonto certificate Form 1004, revised, modified to show corporate ownership and stamped, "exempt organization."

Certificates for Which Substitution is Made to be Forwarded to Washington Each Month: Certificates of owners for which collecting agency certificates are substituted must be forwarded to commissioner of internal revenue at Washington, D. C., by collecting agent not later than the 20th day of month succeeding that in which coupons were received for collection. (T. D. 1903.)

Certificates of Ownership are not required to accompany interest orders or checks in payments of interest on fully registered bonds owned by residents, but claim for exemption must be filed or tax will be deducted: Certificates of ownership not required to accompany interest orders on payment of interest on fully registered bonds, as information as to ownership of bonds will be furnished by debtor organization on monthly list returned, Form 1012, but claims for exemption must be filed with debtor or tax must be withheld. (T. D. 1974.)

In case of interest payments on bonds registered as to both principal and interest, debtors shall deduct normal tax from accruing interest on all such bonds before sending orders with checks to owners, unless there shall be filed with said debtor T. D. 1974 (or fiscal agent through whom said interest is customarily paid) (Art. 41, Reg. 33) at least five days before due date of said interest, not later than 30 days prior to March 1st. (Art. 41, Reg. 33.)

The prescribed certificates claiming exemption, T. D. 1974, from liability for said taxes as herein provided, executed:

(a) By a citizen or resident of the United States, the bona-fide owner of registered obligations, who may claim exemptions under Paragraph (C) Section (2) of income tax law.

(b) By corporations, joint stock companies, associations, or insurance companies, etc., organized in the United States, which are taxable or exempt from taxation as provided in Paragraph (G) Subdivision (A) of the Act. (Art. 41, Reg. 33.)

Certificates Filed by Domestic Owners of Record Disclosing Actual Ownership to Be Filed Monthly: Debtor corporations governed as to withholding by facts as to actual ownership disclosed by certificates. All certificates filed with debtor corporation for the purpose of disclosing actual ownership of stock shall be forwarded to collector of internal revenues for its district on or before the 20th day of the month next succeeding the month during which said certificates were received. (T. D. 2382.)

Substitute Certificates, Entered on Monthly List Returns: All substitute certificates that are received by debtors or withholding agents will be considered same as certificates of owners, and in entering same in making monthly returns, debtors or withholding agents will enter name and address of collecting agent, and number of substitute certificates in lieu of original certificate containing name and address of owners of bonds. (Art. 51, Reg. 33.)

Certificates Claiming Full Exemption Need Not Be Listed, but Must Be Filed With Collector at Usual Time: Until further ruling on the subject, no list return is required to be made of certificates of ownership accompanying coupons filed with debtor or withholding agent when owners of bonds are not subject to having normal tax withheld at source, but all such certificates of ownership shall be forwarded by debtor or

withholding agent to Collector of Internal Revenue for the district on or before the 20th day of month succeeding that in which said certificates of ownership were received. (Art. 56, Reg. 33.)

Certificates of ownership in which exemption claimed to extent of amount of payments need not be listed, and if only this class of certificates are received during the preceding month, no return is required. However, such certificates should be forwarded to the proper Collector of Internal Revenue with a letter of transmittal. (T. D. 2135.)

Fiduciaries Having Control of More Than One Estate or Trust: Wherever fiduciaries have custody and control of more than one estate or trusts having assets of bonds of corporations, etc., of the same issue, they may adopt certificate Form 1015 and 1019, revised, by changing the words "Estate or trusts" in lines one, two and three of said form to the plural.

In such cases, notation should be made on back of certificate showing each estate or trust:

(a) Name of the Estate or Trust. (b) Amount of Bonds. (c) Amount of Interest. (T. D. 1987.)

Ownership Certificates To Be Used by Non-Resident Alien Fiduciaries. Form 1004, revised, is provided for the use of non-resident alien individuals, firms, organizations and fiduciaries, for the purpose of declaring ownership of bonds of domestic corporations, etc., and to be attached to interest coupons detached from such bonds when presenting for payment. (T. D. 2399.)

Alien Non-Resident Partnerships to File Ownership Certificates: Form 1040, Revised, November 22nd, 1916, is provided for use of non-resident alien organizations for the purpose of declaring ownership of bonds of domestic corporations, etc., and to be attached to interest coupons detached from such bonds when making presentation for payment. (T. D. 2329.)

Partnerships, Foreign, Having Place of Business in the United States, Must File Certificate of Ownership to Prevent Deduction at Source on Interest on Corporate Bonds, Etc.: To claim exemption from withholding of the normal tax at the source on their income from sources within the United States a certificate (Form 1086) must be filed. Until such certificate shall be printed, certificates 101, Revised, and 1063 should be used.

Scrip: Scrip certificates issued by a corporation to its stockholders in lieu of dividends bearing interest and redeemable at a specified time not longer than one year from date of issue, are not corporate obligations similar to bonds, mortgages, bonds, mortgages, etc., and not subject to withholding except when amount payable to an individual exceeds \$3,000 in any calendar year. Payment in scrip equivalent to cash. (T. D. 2090, as amended by T. D. 2152.)

Investment Certificates: Issued by corporation for term of years are corporate obligations within meaning of income tax law. (T. D. 2090.)

Return Certificates Are to Be Filed: When withholding agent is authorized by debtor corporation, he may file with collector of his district required returns and certificates, in which case assessment of tax withheld by him will be made in that district. If no authority be given, such reports, etc., will be furnished by debtor corporation to collector of its district, where in such case assessment will be made. (Art. 38, Reg. 33.)

Ownership Certificates: For the purpose of collecting tax, the source shall be withholding agent, and paying agent in the United States, who shall deduct same, and withhold, and no other bank, trust company, etc., taking coupons of interest orders for collection shall withhold tax thereon where such coupons are accompanied by certificates of

ownership signed by owners of bonds, upon which interest had matured. (Art. 39, Reg. 33.)

Certificates of Ownership Not Filed, First Bank, Etc., Receiving Coupons for Collection, Deducts Tax, Using Its Own Certificate: Where coupons or interest orders are not accompanied by certificates, as heretofore prescribed, collecting agency receiving the coupons for collection or otherwise shall deduct and withhold tax, and shall attach to coupons its own certificate, revised Form 1002, giving name and address of owner or person presenting such coupon if owner is not known, with a description of the coupons or interest orders; also setting forth that they are withholding tax upon you. (Art. 52, Reg. 33.)

Limitation on Claims for Refunding: "All claims for the refunding of any internal tax alleged to have been erroneously or illegally assessed or collected, or of any penalty alleged to have been collected without authority, or of any sum alleged to have been accepted or in any manner wrongfully collected, must be presented to the Commissioner of Internal Revenue within two years next after the cause of action accrued: Provided, that claims which accrued prior to June 6, 1872, may be presented to the Commissioner at any time within one year from the said date. But nothing in this section shall be construed to revive any right of action which was already barred by any statute on that date." (Section 3228, Rev. St.) See *Mail & Newspaper Transportation Company et al. v. Anderson, Collector*, 234 Federal 590, April 11, 1916.

Defendant in Suit to Recover Back Taxes: A suit to recover back taxes cannot be maintained against a successor to the collector to whom the taxes were paid, except in his individual capacity. The remedy lies either in an action against the collector who actually received the taxes or in an action against the United States. (*Duncan I. Roberts v. John Z. Lowe, Jr., Collector for the Southern District of New York*. Rendered in U. S. District Court for Southern District of N. Y., November 14, 1916.) (T. D. 2394.)

Statute of Limitations, Bar Removed From Certain Claims for Refund: This office is of the opinion that claims can now be made for refund under Section 14 P. A., Act of September 8, 1916, which have once been rejected by the Commissioner because of the statute of limitation in existence at the time. Claims rejected can also be reopened if the question involves an examination of the return. The power does not extend to other claims whose adjustment does not necessitate an examination of the return. (T. D. 2396.)

Social Clubs: Operated for pleasure and other non-profitable purposes, having no net income inuring to benefit of any individual, are exempt from requirements of Federal Income Tax Law.

Club May Register as an Exempt Organization: All clubs are not exempt from provisions of income tax law, even though not operated for profit. A Club desiring to register as an exempt organization should file with Commissioner of Internal Revenue a copy of its charter, or affidavit by its Officers setting forth its nature, so that determination can be made whether it is exempt under provisions of Paragraph G of Income Tax Law. (T. D. 2090.)

Interest on Collateral Subject to Sale or Hypothecation in Business: Interest paid on indebtedness, wholly secured by collateral, the subject of sale in ordinary business of such corporation, is deductible to the full amount of such interest paid. This contemplates that entire interest received on collateral securing such indebtedness shall be included in gross income returns. (Art. 150, Reg. 33.)

Shares Without Par Value; Computation of Deductible Interest on Indebtedness: In case of shares of stock issued without par value, the amount of capital actually received and for which such shares are issued is the paid-up capital stock.

Hence it follows that the interest which a corporation whose stock

is issued without par value may allowably deduct from gross income amount of interest actually paid within the year on an amount of bonded or other indebtedness not in excess of the sum of one-half of interest-bearing indebtedness outstanding at the close of the year, plus the entire amount of the paid-up capital stock—that is, the amount of capital paid up and represented by the shares issued. And in the case of capital stock issued with par value, so in the case of stock issued without par value, the amount of “paid-up capital stock,” for the purpose of the act, cannot be increased except as new capital paid in and for which additional shares are issued.

In cases wherein shares of stock are issued without par value, such stock is obviously common stock.

If it should occur that such shares are issued as a bonus, in connection with shares of preferred stock, which latter must necessarily have a par or nominal value, and the entire capital paid in represented by par value preferred stock, and in that case “paid-up capital stock,” for all the purposes of the income tax law will be par value of preferred stock.

If both common and preferred stock are issued for cash or other equivalent consideration, the “paid-up capital stock,” within meaning of law, will be par value of preferred stock plus amount actually paid in on shares issued without par or nominal value.

It is, therefore, held that a corporation whose shares of stock are issued without par value has a “paid-up capital stock” within the meaning of the law equal to the amount paid in for such stock, and will be authorized to compute its interest deduction in accordance with the rules set out in law for corporations having a paid-up capital stock, being actually paid-in capital for which shares are issued. (Commissioner J. D. Fletcher, dated January 13, 1916.)

Collateral the subject of sale, refers to physical or tangible property bound for the performance of certain covenants or payment of certain obligations, and which physical or tangible property is the “subject of sale in the ordinary business of the corporation” owning the same. Where such corporation is, as a matter of its ordinary business, engaged in buying and selling, or dealing in such property, the interest actually paid within the year on indebtedness, wholly secured by such collateral may be allowably deducted from gross income as an expense of doing business without regard to the limit of deductible interest as otherwise provided by statute. The corporation, etc., must be organized and operated for the purpose of buying and selling and dealing in the particular kind of property which becomes the collateral in question, and the particular property pledged for the debt upon which interest is paid must be the “subject of sale in the ordinary business of the corporation.” Real estate mortgaged, and property of corporations organized for and engaged in the business of buying, selling and dealing in real estate; warehouse receipts representing property the subject of sale in the ordinary business of the corporation owning the same, and which warehouse receipts are pledged as collateral for such corporation’s debts are examples where the interest paid will be deductible as a “business expense” and not subject to the statutory limitations as to interest deductions. (T. D. 2090.)

Limitation: No Three-Year Limitation to Right of Government to Collect Taxes by Suit or Otherwise: United States vs. Grand Rapids & Indiana Railway—U. S. Dist. Court, Western District of Michigan, February 25th, 1915: In this case the court held that the three-year clause of special excise tax law is not a limitation upon the right of the Government to sue for unpaid taxes, but, at most, is a limitation of the right of collecting officers to make assessments and enforce payment by ordinary summary statutory proceedings.

It follows, therefore, that when additional tax is found to be due for a period antedating the three-year limit, an assessment is not a neces-

sary condition precedent to collect the tax, as the amount of tax may be collected by suit.

Waiver of Three-Year Limitation: While the Government is fully authorized to recover such taxes by suit, this office prefers that collections should be made in ordinary statutory methods, that is as a result of formal assessment. In order that this may be done, corporations should be requested to make amended returns, or to execute waivers in such form as to waive the three-year statutory limitations as to time within which assessment may be made, and the corporation should be informed that, in executing this waiver, they forfeit none of their rights under the law or assume liability to no penalty that might not be enforced against them in the absence of such waiver. The corporation should also be given to understand that execution of the waiver is, in fact, to their advantage, in that it has the effect to eliminate the necessity, on the part of the Government, to recover taxes paid by suit. If however, the corporation against which additional tax liability is discovered, will formally accept finding of the examining officer and agree voluntarily to pay to collector of internal revenue amount of tax found to be due, amended returns or waivers need not be required. (Letter No. 1192 to Collectors.)

Taxes Wrongfully Collected, Suits for Recovery: "No suit shall be maintained in any court for the recovery of any internal tax alleged to have been erroneously or illegally collected, or of any sum alleged to have been excessive or in any manner wrongfully collected, or of any penalty claimed to have been collected without authority, or of any sum alleged to have been excessive or in any manner wrongfully collected, until appeal shall have been duly made to Commissioner of Internal Revenue, according to provisions of law in that regard, and the regulations of the Secretary of the Treasury established in pursuance thereof, and a decision of the Commissioner has been had therein: Provided, that if such decision is delayed more than six months from the date of such appeal, then the said suit may be brought without first having a decision of the Commissioner at any time within date shall be revived by this section." (Sec. 3227, Rev. St.)

Taxes, Limitation as to Suits of Wrongfully Collected: "No suit or proceeding for recovery of any internal tax alleged to have been erroneously or illegally assessed or collected, or of any penalty alleged to have been collected without authority, or of any sum alleged to have been excessive, or in any manner wrongfully collected, shall be maintained in any court unless the same is brought within two years next after the cause of action accrued: Provided, that actions for such claims accrued prior to June 6, 1872, may be brought within one year from said date; and that where any such claim was pending before the commissioner, as provided in the preceding section, an action thereon may be brought within one year after such decision and not later. But no right of action which was already barred by any statute on the said date shall be revived by this section." (Sec. 3227, Revised Statutes.)

Commissions are properly deductible from corpus of estate, they should not be included in fiduciary return on Form 1041, revised, as allowable deductions against interest of beneficiaries. If on the other hand commissions should be deducted from income of estate distributable among beneficiaries amount should be entered on Form 1041 (revised), legitimate and necessary expense deductible from income of estate.

Salaries, Commissions and Profit Sharing: Commissions paid salesmen are income and should be accounted for in return, when indefinite, as to time of accrual not subject to withholding. (T. D. 2090.)

Salaries paid on a straight basis for services at source. If, however, to pay therefrom his own travel or legitimate expenses incident to business of his employment, the income accruing to him is not subject to withholding, the amount not being fixed or determinable. (T. D. 2135.)

A person receiving a salary in excess of \$4,000 and in addition a commission of 1 per cent on all sales, exact amount due on account of commissions not being determinable until February of following year in which commissions were earned, at which time both his salary and commission are paid to him for preceding year, should return such income in the year in which such payment is made.

Where employee is paid a two years' salary on condition that he surrender contract of employment, such sum should be reported in return, and if sum exceeds \$3,000, normal tax should be deducted and withheld therefrom, subject to authorized exemption claimed. (T. D. 2090.)

Where a part of compensation is in form of salary payable monthly, and part in form of bonus and not determined on or after January 1st, of the year following in which services were rendered, two parts of any one year's compensation cannot be considered together for the purpose of withholding tax in making returns; but the fixed salary of one year should be considered with the bonus received on or after January 1st, of that year. (T. D. 2135.)

Salaries paid on a straight basis for services at source. If, however, per diem salary is paid and employee is required by terms of employment to pay therefrom his own travel and legitimate expenses incident to business of his employment, the income accruing to him is not subject to withholding, the amount not being fixed or determinable. (T. D. 2135.)

Commissions Paid Salesmen in Relation to Withholding Its Source: Where an individual works on a straight commission basis and in the earning of his commissions incurs, and personally pays traveling and other necessary expenses, such as show-rooms, hire of sub-agents, or additional help, etc., the amount paid to him as commissions are not subject to withholding of normal tax at the source as such amounts do not represent net incomes.

The amount paid to an individual working on a commission basis who incurs and pays no necessary business expenses in the earning of his commission is held to be net income, and as such, is subject to withholding of the normal tax at the source if the aggregate amount paid during any one year exceeds \$3,000 unless the certificate claiming exemption is filed, and then only upon the amount paid in excess of the exemption claimed. (L. F. Speer, January 12th, 1917.)

Income of Contracting Companies: In the case of a large contracting company, having numerous uncompleted contracts which run for periods of several years, there does not appear to be any objection to such corporation preparing its return in such manner that its gross income will be arrived on basis of completed work, that is, on jobs finally completed and payments made during year in which return is made. If gross income is arrived at in this method, deductions from gross income should be limited to expenditures made on account of such completed contracts (T. D. 2161.)

Steamship Companies Foreign: Expenses of: General expenses, such as coal, ship stores, etc., of foreign steamship companies shall be prorated as provided in the act for interest deductions in case of foreign corporations. (Art. 116, Reg. 33.)

Compromises: The Commissioner of Internal Revenue, with the advice and consent of the Secretary of the Treasury, may compromise any civil or criminal case arising under the Internal Revenue Laws instead of commencing suit thereon; and, with the advice and consent of the Secretary and recommendation of the Attorney-General, he may compromise any such case after suit thereon has been commenced. Whenever a compromise is made in any case there shall be placed on file in the office of the commissioner, the opinion of the solicitor of internal revenue, or of the officer acting as such with his reasons therefor, with a statement of the amount of tax assessed, the amount of

additional tax or penalty imposed by law in consequence of neglect or delinquency of person against whom the tax is assessed and the amount actually paid in accordance with the terms of the compromise (Sec. 2239, Rev. St.)

Corporations—Constitutionality of Act of October 3rd, 1913, Was Attacked on Ground of Alleged Retroactive Features: The Supreme Court upheld the constitutionality of the act.

Constitutionality of the Act of October 3rd, 1913, was attacked because of its discriminating features in exempting certain classes of corporations. The Supreme Court upheld the constitutionality of the Act.

Constitutionality of the Act of October 3rd, 1913. Brushaber vs. Union Pacific Railroad Co. 240 U. S. 1. (January 24th, 1916.)

As a stockholder of Union Pacific Railroad Company, appellant filed a bill to enjoin the corporation from complying with the income tax provision of act of October 3rd, 1913.

The contentions of the appellant were that this part of the statute were repugnant with the 5th and 6th amendment to the constitution.

Court held that as far as the retroactiveness of the statute was concerned, that question was closed, for in *Stockdale vs. Insurance Companies*, 20 Wall 323, in sustaining a provision in a prior income tax law which was assailed because of its retroactive character, it was said:

"The right of Congress to have imposed this tax by new statute, although the measure of it was governed by the income of the past year, could not be doubted, much less can it be doubted that it could impose such a tax upon the income of the current year, though part of that year had elapsed when the statute was passed. The joint resolution of 1864 imposed a tax of 5 per cent upon all income of the previous year, although no one tax on it had already been paid, and no one doubted the validity of the tax or attempted to resist it."

(2nd) The appellant's next principal contention was it was unconstitutional because the act exempted organizations such as labor, agricultural, or horticultural associations, mutual savings banks, etc.; the argument being that as the amendment authorizes a tax on incomes, "from whatever source derived," by implication, it executed the powers to make these exemptions, but this is only a form of expressing the erroneous contention as to the meaning of the amendment which has been disposed of.

The court concluded, after considering the various minor contentions, by saying, "In fact, comprehensively, all contentions relied upon, aside from the erroneous construction of the amendment, which we have previously disposed of, we cannot escape the conclusion that they all rest upon the mistaken theory, that although there be differences between the subject tax to differently tax them transcend the limits of taxation and amounts to a want of due process, and that where tax levied is believed by one who resists its enforcement to be wanting in wisdom and to operate injustice, from that fact, in the nature of things, there arises a want of due process of law and a resulting authority in the judiciary to exceed its powers, and to correct what is assumed to be mistaken or unwise observance by the legislative authority of its lawful powers, even although there be no semblance of warrant in the constitution for so doing. Affirmed.

Surplus, Undivided, Corporations: Individuals are subject to the additional tax on incomes derived from gains and profits of corporations whether distributed or not: Sub-division 2, of paragraph a, Income Tax Law of October 3rd, 1913, imposes no duty on the taxpayer to ascertain the distributive interest in the undivided surplus of corporations for the purpose of making return of the amount in addition to the amount of dividends declared on the stock, unless the Secretary of the Treasury has certified that in his opinion, such accumulation is unreasonable for the purpose of the business. (T. D. 2135.)

Income Defined, Corporation Stock Dividends paid from net

earnings or of surplus undivided profits of corporations, joint stock companies or associations, insurance companies, are held to be equivalent of cash and constitute taxable income, under the same conditions as cash dividends. (T. D. 2274.)

Stock Dividends, Calculation of "Cash Value": The cash value of stock dividends paid from the net earnings and established surplus or undivided profits of a corporation is determined by the amount of earnings, profit or surplus distributed, and that the valuation at which the stock is distributed in payment of the dividend the terms amount to be included in the recipient's personal return. That is in the case where a corporation issues one thousand shares of stock, par value of \$100, and distributes 500 additional shares in payment of a dividend declared from net earnings, profits or surplus amounting to \$50,000, one holding ten shares of the original stock and receives five shares of the new stock as his pro rata share of the dividends, should, on account of their receipt, include \$500 in his personal return.

Partnerships (Limited), Held to Be Corporations, and in their organized capacity are subject to income tax as corporations. (Art. 886, Reg. 33.)

Partnerships, limited, held to be associations within the meaning of the income tax law will use Form 1031 in making their returns. (T. D. 2137.)

Promissory Notes of Corporations: Promissory note not exceeding one year in time is not similar to bonds, mortgages, etc., and not subject to withholding except when amount of interest to any one individual exceeds \$3,000, or when interest thereon is payable to non-resident alien, in which case tax should be withheld regardless of amount of payment. (T. D. 2090.)

Corporations, Obligations of Defined: Corporate obligations similar to bonds, mortgages, deeds of trusts, etc., for income tax purposes, held to be those obligations which, though not bond mortgages or deeds of trusts, are similar in form in being extended beyond time of ordinary commercial paper. Interest payments on ordinary commercial paper payable to individuals subject to withholding at source only when payment to any one individual exceeds \$3,000 within taxable year. On all other obligations payable to individuals payments are subject to withholding regardless of amount. (T. D. 2090.)

Foreign Corporations Not Having Place of Business in the United States or Doing Business Therein: When record owner of domestic corporate stock is non-resident alien, corporation, etc., not having any place of business or engaged in business in the United States, debtor corporation will withhold normal tax and pay same to authorized collector.

Term "Corporations" as used above covers corporations, joint stock companies, associations, and insurance companies. The term "non-resident alien corporations" covers all corporations, joint stock companies, or associations and insurance companies organized, authorized or existing under laws of foreign country, having no place of business in the United States; the term "resident alien corporations," such foreign organizations as have office or place of business in the United States. (T. D. 2401.)

Exemptions, Method of Claiming by Corporations, Etc.: If such items are presented by corporations, joint-stock companies or associations and insurance companies, organized in the United States, the former certificate heretofore prescribed for such organizations, (Form 1001) shall be used and in such instances no tax shall be deducted. (Art. 60 Reg. 33.)

Corporation Defined. "Corporations" or "Corporation" as used in these regulations, shall be construed to include all corporations, joint-stock companies or associations, and all insurance companies coming within the terms of law, and all such other organizations hereinafter referred to as "corporations." (Art. 78 Reg. 33.)

It is immaterial how corporations are created or organized. The terms "joint-stock companies," or "associations" shall include associates, real estate trusts, or by whatever name known, which carry on or do business in an organized capacity, whether organized under, and pursuant to state laws, trust agreement, declaration of trust, or otherwise, the income of which is distributed or distributable among the members or shareholders on basis of capital stock which they hold, or where there is no capital stock, on basis of proportionate share of capital which each has invested in business or property or organization, all of which joint stock companies or associations, shall in their organized capacity be subject to tax imposed by this act. (Art. 79 Reg. 33.)

Corporation Unless Specifically Exempt Shall File a Return: Every corporation not specifically exempt shall make return of annual net income required by law, whether it have income liable to tax or not, or whether it shall be subordinate or controlled by another corporation. (Art. 80 Reg. 33.)

Tax imposed by income tax law is not imposed only on corporations organized and operated for profit. Any corporation, no matter how created, organized, or what its purpose may be, unless it comes in class of organizations specifically enumerated, will be required to make return of annual income.

It is therefore held that commercial men's associations and like organizations come within the requirements of law. (T. D. 2152.)

Corporation Subsidiaries: Under provisions of Income Tax Law, every corporation, regardless of its relation to other corporations is held to be a distinct and separate entity. (T. D. 2137.)

In case of parent corporation owning practically all the stock of subsidiary company, it is held each is a distinct entity and each must return a separate return and pay tax upon income as shown by return.

It is not sufficient for purpose of income tax law that parent company report gross income of subsidiaries and deduct from such gross income expenses of such subsidiaries. Net earnings turned over by subsidiary to parent company are dividends within the meaning of the law, and as such dividends are not deductible from gross income, parent company must pay income tax on its net income notwithstanding the fact that earnings out of which dividends have been paid has been subject to tax as against subsidiary company. (T. D. 2137.)

Corporations maintained for the purpose of protecting brands, trade marks and trade names are subject to return.

If such subsidiary companies have no income, earnings or expenses of operation, and earnings accrue directly to parent company, that fact must be clearly set out in return of subsidiary.

If, however, subsidiary concerns are mere partnership or branches of parent company and not incorporated organizations, then no return need be filed. The parent company must include in their return earnings and expenses of such branch. (T. D. 2161.)

If subsidiary company of any parent corporation making a return in any particular district have principal place of business in same district, collector of that district should list such corporations in his Form 632.

If subsidiary companies keep separate books of account and have principal accounting office in other districts, return of such corporations will be made to Internal Revenue Collector for district in which they have principal offices. (T. D. 2137.)

Corporations Closed: A corporation formed as a family affair to hold property together does not come within the class of organizations specifically enumerated as exempt from making return. (T. D. 2137.)

Corporations Owned by Exempt Organizations: A corporation whose stock is owned "by an association organized and operated exclusively for religious, charitable, scientific or educational purposes, no part

of whose net income inures to benefit of any member, stockholder or individual," required to make return of annual income.

The fact that stock of corporation, except shares qualifying directors, is owned by corporation which itself comes within the class of exempt organizations, does not relieve first named corporation from liability under Income Tax Law. Liability of a corporation not contingent upon ownership of its stock. (T. D. 2137.)

Corporations Operating Leased or Purchased Property: A corporation which has leased its properties in consideration of a rental equivalent to a certain rate of dividends on its outstanding capital stock and interest on bonded indebtedness, and such rental is paid by lessee direct to stockholders and bondholders, should nevertheless make return showing the rental so paid as having been received by corporation. (Art. 80 Reg. 33.)

Payments measured by a fixed percentage on stock of railroad corporation to lines released by another railroad on which rent is payable by lessee direct to stockholders, have status of rental payments.

In such case to the lessee such payment is expense of operation; to the lessor, income.

A contract which provides that rental shall be paid to a third party, and not party to contract, does not change character of payment, nor relieve lessor from liability to tax on such payments. The income of third party, the stockholder, is dividends on stock which he holds on lessor company. Dividends cannot be paid unless lessor has income out of which to pay them. Hence lessor company is required under law to return as income the rentals which lessee is required to pay. In paying direct to stockholders, lessee is acting agent of lessor and amount received by stockholders are in fact dividends received out of earnings of lessor. (T. D. 2090.)

Such a company, operating leased or purchased lands, shall include all receipts derived therefrom, and, if bonded indebtedness of such lines have been assumed, such operating company may deduct interest thereon, not exceeding one-half of sum of its interest bearing indebtedness and its paid-up capital stock at close of year. (Art. 81, Reg. 33.)

Corporations operating leased lines should not include capital stock of lessor corporations in their own statement of capital stock outstanding at close of year. The indebtedness of such lessor corporation should not be included in statement of indebtedness of lessee unless lessee has assumed the same. (Art. 82, Reg. 33.)

Corporations in Existence But Part of Year: All corporations having an existence during all or any part of a year, are required to make return. Dissolved corporations, whose fiscal year co-incides with calendar year will make return covering the period from January 1st, to date of dissolution, and corporations having a fiscal year other than calendar year will make returns covering period from beginning of fiscal year to date of dissolution, and new corporations will make return for period from date of their organization to December 31st. The net income in all such cases will be ascertained in manner set out in Paragraph (G) relating to corporations. (T. D. 2090.)

Corporations Organized During Tax Year: Corporations organized during year should render a sworn return covering that portion of year during which it was engaged in business or had an income accruing to it. (Art. 84, Reg. 33.)

Corporation Organized But Transacting No Business Within Year of Its Organization: A corporation organized and transacting no business within the calendar year of its organization, must, nevertheless, make and file a return on the basis of the calendar year unless such corporation designate a fiscal year other than calendar year in the manner and form provided for that purpose. (T. D. 2090.)

Corporation Liquidating During Tax Year: Corporations going into liquidation during any tax year may at time of such liquidation pre-

pare a "Final Return" covering income during the fractional part of the year during which they were engaged in business and immediately file same with the collector of the district in which corporation has its principal place of business. (Art. 85, Reg. 33.)

Corporations Dissolving Before Time For Making Returns: Corporation which has continued in business to a calendar year cannot evade liability of special excise taxes imposed by Act of August 5th, 1909, Section 38, by dissolving before time when return required is to be made. (U. S. v. General Inspection & Loading Co., 192F, 223.)

Under Corporation Act N. J., Section 53-55, the officers of a dissolved corporation which were also directors, have authority to make return of its business of preceding year on which it has incurred liability for special tax imposed by Act of August 5th, 1909, Section 38.

Corporations Not Completely Organized: Corporations which have applied but never received charters, or corporations which have received charters but have never perfected their organizations, transacted no business, and have had no income from any source, may upon presentation of these facts to Collector be relieved from making return of income as long as they remain in this unorganized condition. (T. D. 2152.)

Foreign Corporations: Similar tax should be levied, assessed and paid annually by corporations, joint-stock companies, or associations and insurance companies organized, authorized or existing under laws of any foreign country upon amount of income accruing from business transacted in the United States as that paid by domestic corporations. (Art. 77, Reg. 33.)

Tax on Foreign Corporations: Foreign corporations shall be subject to normal tax (six) per cent, computed upon income received by such corporation from business transacted and capital invested in this country. (Art. 157, Reg. 33.)

Foreign Corporations Having Several Branches in the United States: A foreign corporation having several branches in the United States should designate one of such branches as its principal office, and should also designate proper officers to make required return. (Art. 83, Reg. 33.)

Tax Upon Corporations coming within terms of this law are subject to normal tax only; that is, the tax computed on level rate of (6) per cent. of entire net income regardless of amount of such income.

Corporations Exempt Include Foreign as Well as Domestic Corporations: It is held that exemption provisions specified in Section 11, under heading "Conditional and Other Exemptions," includes foreign as well as domestic corporations.

Under the Federal Income Tax Law of September 8th, 1916, which provides that every organization enumerated in Section 11 shall be exempt, on its earnings or income, this office holds that this applies whether organization be domestic or foreign. (Commissioner W. H. Osborn, September 6th, 1916.)

Corporation Specifically Exempt, Class: A corporation is not exempt simply because it is primarily not organized for profit. If income within meaning of law accrues to a corporation not organized for profit, such income subject to tax imposed by this act. (T. D. 2152.)

Exempt Corporations Are Subject to the Withholding Provisions of Act of September 8th, 1916: Section 11 of this Act provides that there shall not be taxed under this title any (and then fourteen different kinds of corporations and associations are named). Is held under this language that the statute relieves from tax the income of the corporation or organizations named in Paragraph (A) of Section 11, and that said corporation or organizations are required to answer under all other provisions of the statutes as to withholding and making returns of tax withheld. (T. D. 2407.)

Exempt Corporations Must on Request Prove Right of Exemption:

All corporations and beneficiary societies must at request of Collector or Commissioner of Internal Revenue establish their right to exemption. In absence of such a showing, such organization may at any time be required to make annual returns, in order that status of company may be determined. (Art. 88, Reg. 33.)

Corporations Whose Right to Exemption Is Questionable: Any corporation whose status under the law is in doubt, or which does not clearly come within one or another class of those enumerated as exempt, should file a returns blank, and attach thereto a statement of the nature of the organization, source of its income, disposition made of same, and particularly of any surplus. (Art. 91, Reg. 33.)

Corporations Having Once Shown Their Exemption Need Not Do So Again: In all cases where organizations have clearly established, to the satisfaction of collectors that they are exempt, names of such organizations should be eliminated from Form 632, and further return will not be required of them so long as they operate in accordance with evidence upon which ruling holding them exempt was predicated.

Such organizations having once satisfied collector of their exemption are not required to make further showing unless collector has reason to believe change of status, or that it has income inuring to benefit of members. (Letter 1148 to collectors.)

Gross Income of Manufacturing Corporations: Shall consist of total sales of manufactured goods during the year covered by return, increased or decreased by gain or loss as shown by inventories of finished and unfinished products, raw material, etc.; at beginning and end of year. To this amount should be added the income, gains, or profits from all other sources, as shown by books of accounts. (Art. 144, Reg. 33.)

Gross Income of Mercantile Corporations: Shall include total sales during year, increased or decreased by gain or loss as shown by inventories of merchandise at the beginning and end of year for which return is made; this amount should be added the income, gains or profits derived from all other sources. (Art. 105, Reg. 33.)

Gross Income of Miscellaneous Corporations: Shall consist of total revenue derived from management of business and property or corporation making return, together with all amounts of income from all other sources, as shown by books of accounts (Art. 106, Reg. 33.)

Gross Income of Corporations Conducting More Than One Class of Business: Where a corporation is engaged in carrying on more than one class of business, gross income derived from different classes of business shall be ascertained according to definitions above, and which are applicable thereto. (Art. 112, Reg. 33.)

Corporations, Foreign: For the purpose of a tax of the net income of such foreign organizations shall be ascertained by deducting from gross income arising, received, or accruing from business, done and capital invested in this country, received within the year from all sources in the United States, the deductions enumerated in the act, which deductions shall be limited to expenditures or charges actually incurred in operation of business transacted and capital invested in the United States, or as to certain charges, such proportion of aggregate charges as the gross income bears to the aggregate income within and without the United States. In other words, deductions from gross income of foreign corporations doing business in this country should, as nearly as possible, represent the actual expenses and authorized charges incident to the business done, and capital invested in this country, and must not comprehend either directly or indirectly any expenditures or charges incurred in the transaction of business or the investment of capital without the United States. (Art. 157, Reg. 33.)

Corporations Foreign, Deriving Their Taxable Income Solely From

Stocks or Bonds of Domestic Corporations: Deductions Permitted: The liability of a foreign corporation to income tax on income is received by it from stocks and bonds on domestic corporations exists because of the fact that such corporation has capital invested in security, the income from which has its source in the United States.

It, therefore, follows, that, as income arising and accruing to a foreign corporation from capital invested in stocks and bonds of domestic corporations, is subject to the tax imposed by Section 2, Act of October 3, 1913, it will be permissible for such a corporation although its income from the United States is derived, "solely in the form of dividends and interest" on domestic stocks and bonds, to deduct from gross income so received any or all of the items scheduled in the law as proper deductions in the case of a foreign corporation, regardless of source of the income, provided the amount so deducted will not exceed the limit defined in schedule of allowable deductions.

It is contemplated by this ruling, however, that in as far as practicable deductions shall comprehend only such expenditures, losses, etc., as are incurred in or are incidental to the creation of the income against which they are charged, in all cases deductible amount must be within the limit fixed by law. (From letter signed by Commissioner W. H. Osborn, and dated June 6, 1916.)

Corporations Foreign, Interest Accrued and Paid on Indebtedness: Foreign Corporations in determining interest the maximum principal upon interest for purpose of deduction may be computed, will add to the amount of its paid-up capital stock, or if no capital stock, then amount of capital employed in business, one-half the interest-bearing indebtedness, both outstanding at the close of the year. Such proportion of this sum as the gross income derived from business transacted in this country bears to the gross income or capital invested, both within and without the United States, will constitute the maximum principal upon which interest for which purpose of a deduction from income in the United States, may be computed. For instance, if the gross income in the United States is one-fourth of the entire gross income, then one-fourth of the sum of the paid-up capital stock plus one-half the interest-bearing indebtedness will be maximum principal upon which interest deductible from the United States income may be computed. (T. D. 2090.)

Return by Every Corporation Unless Specifically Exempt Shall File: Every corporation not specifically enumerated as exempt shall make return of annual net income required by law whether or not they have any income liable to tax, or whether or not it shall be subordinate or controlled by another corporation. (Art. 80, Reg. 33.)

Corporation; Change of Name: The mere change of name does not constitute a new corporation. If business was continued throughout the year, no change in management other than change of name, the returns should be made covering the business transactions throughout the year, such returns to be made by corporation in name which it bears at end of the year, with a notation on the return to the effect that name has been changed, giving old and new names. If a distinct new corporation is organized to take over the property of the old, both corporations will be required to make separate returns covering the periods of the year during which they were respectively in charge of the business. (T. D. 2137.)

Corporation; Notice to, If Return Not Filed on Time: Where required returns are not filed within prescribed time either by individuals or corporations, notice on Form 1045 should in each case be sent to delinquent. (Art. 196, Reg. 33.)

Corporations; Foreign and Domestic, Doing Business in Foreign Countries, Extension of Time in Making Return: In cases wherein foreign corporations or domestic corporations doing business in foreign

countries are unable to assemble their data in time to make their return of annual net income within the prescribed time, it will be permissible for such corporations upon showing of such fact to file with collector of internal revenue a tentative return in which there shall be approximated as nearly as possible the actual business transacted during the year.

This tentative return will be substituted by a true and accurate return as soon as the necessary data to make such true and accurate return shall be available.

Collectors of internal revenue are authorized to grant an extension of time not in excess of thirty days from date returns are due. Such extension should be granted only in cases wherein the neglect to file the return within prescribed time was due to sickness or absence of an officer whose signature to return was necessary. Foreign corporations or domestic corporations doing business in foreign countries cannot be granted an extension of time merely for the reason that they are unable to assemble their data to make the returns within the prescribed time. In all such cases, liability to penalty can be obviated only by filing a tentative return as hereinbefore indicated. (T. D. 2137.)

Corporations, Returns By, Must Be Made on Specified Forms: Under authority conferred by this act, forms have been prescribed, in which various items specified in the law are to be stated. Blank forms of this return will be forwarded to collectors and should be furnished to every corporation, not expressly exempted, on or before January 1st of each year, and in the case of corporations making their return for the calendar year on or before the 1st day of next fiscal year in making returns for their fiscal year. Failure on part of any corporation, joint stock company, etc., liable to this tax, to receive a prescribed blank form will not excuse it from making return required by law, or relieve it from any penalties for failure to make return in the prescribed time. Corporations not supplied with proper forms for making the return should make applications therefor to the collector of internal revenues in whose district is located its principal place of business and ample time to have its return prepared, verified, and filed with the collector on or before the last due day as hereinafter defined. Failure in this respect subjects it not only to 50 per cent additional tax, but to the specific penalty imposed for delinquency. Each corporation should carefully prepare its return so as to fully and clearly set forth the data therein called for. Imperfect or incorrect returns will not be accepted as meeting the requirements of the law. (Art. 163, Reg. 33.)

Corporations, Forms To Be Used in Making Returns: Form Nos. 1030, 1030-a and 1031 to be used by corporations when making their returns of annual net incomes as follows: No. 1030 by insurance companies, including mutual life and mutual marines; No. 1030-a by mutual insurance companies other than mutual life and mutual marine; No. 1031 by all other corporations. (T. D. 1928.) (Modified.)

Corporations: Supplementary Statements on Returns: In the case of Public Service and all other corporations it is desired by this office that the supplementary statement which forms a part of the return form, 1031, prescribed by the Secretary of the Treasury for the use of such corporations in making their returns of net income, shall be prepared as far as practicable in detail.

It is not expected or required, however, that any particular item going to make up gross income or deduction therefrom shall be set out in said statement. It will be sufficient for the purpose of this office in case of Public Service corporations and other similar concerns that they supply the information by classes rather than give the items in detail. The income and expenditures in the same manner as required as to these items by the Interstate Commerce Commission. (T. D. 2197.)

In cases where employees or officers of a corporation are paid a stated salary, to which is added a certain percentage of the net profits

of the corporation as compensation for services rendered, such corporation will be required to report under Item 4(a), Form 1030 or 1031, the amount of such combined payments made to such individuals during the year, provided combined amount is \$3,000 or more. (T. D. 2152.)

Corporations Doing Business in the Philippines and Porto Rico: Corporations whose business is done wholly in Porto Rico and the Philippines, even though incorporated in the United States and held to be resident corporations of these possessions, and will make returns and pay income tax to collectors of internal revenue having jurisdiction there. (T. D. 2090.)

Such corporations organized under the laws of the United States, or any State thereof, resident in the United States but doing business in these possessions, are taxable in the United States. If they are organized under the laws of the United States or local laws of these possessions and resident in said possessions, they are required to pay their tax in the Philippines or Porto Rico as the case may be. HELD that: "Principal place of business" of a corporation is place of office in which are kept the books of accounts and other data from which return is to be prepared. (T. D. 2090.)

A domestic corporation doing the greater part of its business in the United States and having principal place of business in this country and transacting business in Porto Rico through a branch office required to report its return of net income, its earnings from all sources, including those arising and accruing to branch in Porto Rico, or elsewhere.

The return of such corporation will be made to Collector of Internal Revenue of the district in this country in which is located its principal place of business. (T. D. 2137.)

Corporations, Fine Against: Where an action is brought by the United States against delinquent corporations for failure to file return under Corporation Tax Act, Section 38, the verdict must specifically state that amount of the penalty, not less than \$1,000.00, after which the corporation's only remedy (other than an appeal) is to apply for a compromise under Revised Statutes, Sections 3229, 3469—U. S. Comp. Stat. 1901, ps. 2089, 2317—United States v. Acorn Roofing Company, 204 Fed. 157.

Corporations, Fine Against Officers: In case of an officer of a corporation or like institution charged with the duty and responsibility of making and verifying a return, who makes a false or fraudulent return, with intent to deceive or evade any assessment of tax, he shall be guilty of a misdemeanor, and be subject to a fine not to exceed \$2,000.00, or to imprisonment not to exceed one year, or both, at the discretion of the court, with costs. (T. D. 1950.)

Penalties; Corporations: In the case of neglect or refusal to make and verify a return within the prescribed time (except in case of sickness or absence) 50 per cent is to be added to the tax. (T. D. 1950.)

In case of (intentional) neglect or refusal to make, or for a false or fraudulent return made, 100 per cent is to be added to the tax. (T. D. 1950.)

Corporation Sale of Assets of Another Corporation for Stock, Share for Share of Like Par Value, in the New Vendee Corporation to an Amount Equal to an Entire Issued Capital Stock of the Old Vendor Corporation, Which Stock Because of Increased Value of Assets Is Admittedly Worth Double Par: Exchange of stock, that is the issuance of stock by the second corporation for the stock of the first corporation, share for share of like par value, would not constitute a stock dividend, and in exchange on basis indicated, would not result in any taxable income to the stockholders of the first company receiving in exchange for their former holdings the stock of the second company. The stock both authorized and issued, being in both cases of like par value and being predicated upon exactly the same assets, the transaction constitutes a deal by which the second company takes over the assets of the first

company, giving therefor its stock of a par value exactly equal to the par value of the stock of the first company outstanding, thus placing in the hands of the stockholders the same number of shares of the second company, and the same par value as that which they therefore held in the first company, the stock in both cases being supported by the same assets.

Hence, such transaction results in no gains, profits, or income to either the first corporation or its stockholders.

In case stock of the first company at the time of such transaction is worth "double par" the stock of the second company being supported by identically the same assets is presumably of the same value, and the exchange of the new stock for the old, results in no income subject to the tax. It is simply an exchange of assets of like character and like value.

If stockholders in new company shall hereafter sell their stock, they will be required to account for as taxable income, any amount which they may receive for the same in excess of the cost to them of the stock of the first company. (Acting Commissioner David A. Gates, March 9th, 1917.)

Extension of Time for Filing Income Tax Returns by Corporations Making Returns on Fiscal Year Basis: Under the Act of October 3, 1917, a corporation which has named August 31st as close of fiscal year will be given an extension of time upon application showing reasonable cause for delay in making income and excess profit tax returns on basis of fiscal year. (Commissioner Daniel C. Roper, October 15, 1917.)

Final Return in the Case of a Corporation Liquidating During the Past Year: Under the regulations of this office, at the time a corporation dissolves or liquidates, it is required to make what is termed a "final return," and if such return shows a net income for that portion of the year during which the corporation was in business, the proper officer of the corporation should retain sufficient funds out of which to pay the income tax assessable on the basis of the income so returned. If the fund for this purpose are not retained, this office will look primarily to the officers of the corporation for the payment of the taxes shown to be due, and should they fail to pay the tax, the government will look to the stockholders for its payment. (Acting Commissioner David A. Gates, March 22nd, 1917.)

Tax of 6% Withheld on Interest on Corporate Obligations Payable to Non-Resident Foreign Corporations on and After October 4th, 1917: Paying agents of interest on bonds of domestic corporations owned by foreign corporations not engaged in business in the United States and having no office or place of business therein are required to deduct and withhold the tax of 6% on and after October 4th, 1917. (T. D. 2547.)

Tax to Be Deducted at Source on Dividends Paid on Stock Actually Owned by Non-Resident Alien Corporations Not Engaged in Business, Etc.; If Paying Corporation Is So Informed, Although Record Owner Is Non-Resident Alien Individual or Partnership: Inasmuch as the certificates shown that the actual owners of the stock are non-resident alien corporations, subject to the deduction of the normal tax at the source and such information is now in the hands of the paying corporation the normal tax should be deducted from any future dividends upon the stock in question. And as far as previously paid dividends upon the stock the Collector of the Internal Revenue should be informed as to the amounts of dividends paid during the years 1916 and 1917 from which an income tax was withheld in said case. (Deputy Commissioner L. F. Speer, October 6th, 1917.)

Deduction at the Source on Corporate Security Interest Payments to Non-Resident Alien Co-Partnerships: Under the provisions of the Federal Income Tax Law of September 8th, 1916, as amended by the war revenue act of October 3rd, 1917, no form of income derived from sources within the United States by a foreign co-partnership having no office or

place of business in the United States is subject to withholding of normal income tax at the source. (Commissioner Daniel C. Roper, October 26th, 1917.)

Deduction of Tax at the Source on Dividends Paid to Non-Resident Alien Corporations Is at 2% Rate: Domestic corporation paying dividend to foreign corporations having no office or place of business in the United States should withhold 2% only. (Commissioner Daniel C. Roper, October 29th, 1917.)

Coupons From Foreign Owned Bonds Belonging to Domestic Corporations: In such case the bank should use Form 1001 and strike out in line (2) of certificate the words "Bonds, from which were detached the accompanied" so that the declaration will be of ownership of coupons.

Monthly Return to Be Filed by Withholding Agents Receiving Coupons Without Certificates: Withholding agents receiving coupons not accompanied by certificates of owners are required to file monthly and annual return in duplicate.

Required monthly return, Form 1044, shall give list of all coupon or interest payment made on which the normal tax was deducted and withheld, and shall show name and address in full of owner of, or the person presenting such coupons or interest orders; if owners not known, amount of income subject to tax and amount withheld. (Art. 53, Reg. 33.)

Damages: An amount received as a result of a suit for personal injuries is held to be income. An amount thus received would be similar to an amount paid to a person insured by accident policy on account of accident sustained. (T. D. 2135.)

Debtor, Defined: A "debtor" as hereinafter used shall apply to all corporations, joint stock companies, associations and insurance companies. (Art. 38, Reg. 33.)

Debts Deductible by Citizens or Residents: A worthless debt as contemplated by the income tax law is a debt actually ascertained worthless and charged off within the taxable year. (T. D. 2090.)

Debts arising from unpaid wages, rents and other items of taxable income due and payable on or after March 1st, 1913, will not be allowed as general deductions unless the income which they represent has been included in gross income for the year in which deduction is sought to be made.

All debts payable prior to March 1st, 1913, and not ascertained to be worthless prior to that date are held to be allowable deductions for the year in which they are actually ascertained to be worthless and are charged off. (T. D. 2224.)

Debts Charged Off on Recovery Prior to January 1st, 1909: The fact that a bad debt has been previously charged off and this appeared from assets of bank, even prior to 1909, does not make it any the less income for year in which recovered. Neither the date on which it was charged off nor the fact that it is not deducted from gross income for tax purposes in any way affect its character as income for year in which recovered. (Acting Commissioner David A. Gates, February 11, 1916.)

Debts; Bad: Bad debts, if charged off the company's books during the year, are proper deductions. But if such debts are subsequently collected, they must be treated as income. (Art. 125, Reg. 33.)

Manner of Determining When a Bad Debt May Be Considered Worthless and Be Treated as a Loss: This office does not require in the case of an individual debtor, that an unsatisfied judgment shall exist, or judicial determination be reached in order that a creditor may secure the benefit of a deduction on account of a debt which he considers worthless and uncollectible, but, taking into consideration the time the debtor has overrun and the financial condition of the debtor, it

is required that it be shown beyond a reasonable doubt that the debtor is worthless and uncollectible.

The office holds that a debt due from a corporation possessed of assets cannot be claimed as a deduction except for the year during which the corporation's affairs are finally closed and its receiver in bankruptcy discharged; and where a creditor, to protect himself from a total loss enters into a compromise agreement under the terms of which he accepts a part payment of a debt and releases the debtor from payment of the balance, the unpaid portion may be claimed as a deduction. (Commissioner Daniel C. Roper, October 16, 1917.)

Insane Deceased or Insolvent Persons; Delay in Payment of Tax from Estate: With reference to that part of the Income Tax Law which reads as follows: "Any sum or sums due unpaid after the 15th day of June in any year and for 10 days after notice and demand thereof by the collectors, there shall be added the sum of 5 per cent per month on taxes unpaid, and 1 per cent per month upon said taxes from the time the same became due except from the estates of insane, deceased or insolvent persons." The office holds that the exemption provision therein applies in case of nonpayment of tax by reason of insanity, decease or insolvency of the taxpayer occurring after a personal return has been rendered by an incapacitated person. Second, the provision does not relate to fiduciaries required to make returns under the law.

Decedent, Payment of Tax by Representative on Income Accrued to the Time of His Death: Held that income due from deceased person is a debt against the state in hands of representative, and such representative will file a return for the decedent that the tax due the government may be determined and paid. (T. D. 2152.)

If income of decedent from January 1st, of the year in which he died to the date of his death amounted to three thousand dollars (\$3,000.00) or over, a return must be filed by his representative on Form 1040, revised, and all deductions and exemptions to which he would be under the law entitled to may be claimed by such representative. (T. D. 2090.)

Income Accruing to Decedent Dying After March 1st, 1913, But Before October 3rd, 1913, Taxability of: (Decision) Brady et al., Ex-exutors, v. Anderson, Collector, U. S. Dist. Ct. of N. Y., Aug. 24th, 1916.)

Action by plaintiff in capacity as administrator, to recover tax assessed against net income of intestate from March 1st, 1913, to July 22nd, 1913, date of intestate's death.

The liability of a person who lived after March 1st, 1913, the date the income tax was to be computed from, and died before October 3rd, 1913, date of approval of the Act; in such case, should the tax be assessed upon his income accruing between March 1st, 1913, and the date of his death?

The court held that inasmuch as the act was retroactive, it would include all income, whether accruing to a living person, or to the estate of a decedent. Court rendered judgment in favor of defendant.

Tax Need Not Be Deducted Even Though Form 1019 Is Filed: Certificates are not required in case where the payor of income to another person has knowledge of non-taxability of payee under the Income Tax Law; but payor is responsible for accuracy of the facts under Penalties imposed by the Law.

If a fiduciary file certificate 1019, revised, leaving duty upon debtor corporation to withhold normal tax, and debtor corporation has knowledge of non-taxable character of its payments, to such fiduciary or beneficiary, the certificate may be offset by showing that said income is not taxable in hands of ultimate recipient.

Any amount of tax erroneously withheld and paid to government may be recovered by showing the facts in claim for refund as provided by Article 33 (c), Reg. 33 of January 5th, 1914.

Income, Items Deductible and Not Deductible: In referring to the difference between expenses of administration of estates set forth as not allowable deductions in T. D. 2090, and expenses itemized as allowable deductions on Form 1041, revised (old form), distinction is sought to be made between first expenses as are properly chargeable against an estate as an entity and other expenses incident to administration which may arise in its management.

Among former T. D. 2090 cites court costs, attorney's fees, executor's commissions, etc., and among latter may be cited usual necessary expenses of carrying on business, including salaries, wages, rentals paid and such repairs as are necessary and do not constitute improvements which increase the value of the estate. The former is meant to apply to expenses that reduce estate in administrator's hands and latter to legitimate expenses that reduce income accruing to beneficiaries, but not estate itself. (T. D. 2135.)

Inheritance Taxes Not Deductible: Collateral inheritance taxes levied under laws of a state being as it is charged against corpus of estate does not constitute an allowable deduction in computing tax liability either to estate or beneficiary.

Tax-Free Clause: Where a trustee holds bonds issued by a corporation, joint stock company, etc., which contain tax-free clause and ownership certificate, No. 1019, revised, claiming no exemption, is filed with debtor corporation or its duly authorized agent, the amount of interest derived from the bonds may be entered in Column A, Page 2, of Form 1041, revised, as income from which normal tax had been withheld at source.

Payment in Aggregate Governs Deduction of Tax at Source, Regardless of Varying Character, Constituting Income: The normal tax should be withheld whenever aggregate payments, fixed or determinable income to an individual in any one calendar year exceeds \$3,000, regardless of varying character of income entering into payments. (Art. 65, Reg. 33.)

Quarters, heat and light, and mileage, payments of, while traveling under orders, indefinite and irregular as to amount and time of accrual and therefore not subject to withholding under requirements of Income Tax Law. (T. D. 2079.)

Tax Withheld To Be Paid to Collector of Internal Revenue: Normal tax shall be deducted and withheld at source and payment made to collector of internal revenue as provided by the law by debtor or by his or her duly authorized agent appointed to make such deduction and payment. (Art. 34, Reg. 33.)

Tax Deducted at Source Not To Be Deducted Again by Agent or Other Person: No other person, organization, in whatever capacity acting, having the receipt, custody or disposal of any income as herein provided, shall be required to again deduct and withhold normal tax thereon.

Tax Deducted at Source, Personal Liability For: Field officers of the bureau are under obligations to see that proper authorities and proper returns are made by both individuals and withholding individuals in their respective districts. When such officers come upon evidence that normal tax should have been held at source, they should satisfy themselves whether there has been neglect or refusal on part of debtor corporations or withholding agents to comply with requirements of Income Tax Law.

Taxpayers and withholding agents held responsible for accuracy of their returns, and respective liabilities, cannot be shifted from one to the other.

Imposition of penalties named in law by reason of neglect or failure of withholding agent to make proper return is therefore apart from assessment on individual returns; therefore individual returns of annual

net income on Form 1040, revised, should be accepted as rendered if made with requirements of form. Withholding agents, however, will be held liable for failure to deduct and pay tax for which under terms of law they are personally liable; and such responsibility remains with withholding agents until tax due has been received by the Government. (Letter No. 1265, to Collectors.)

Tax Not Subject to Withholding at Source Until Payment Is Made Thereof. (Deputy Commissioner L. F. Speer, March 1st, 1915.)

Deductions Claimed at Time of Receipt of Income: Under Section 9-b, Act of September 8th, 1916, when any amount allowable as a deduction, in Sections 5 and 6 of the Act, is known at time of receipt of income by individual, whose income is subject to withholding, he may file with firm or corporation, etc., making such payment a certificate, stating amount of deductions and making a claim for the allowance of same, whereupon there shall be no withholding upon the amount of such claim, and such certificate shall become a part of return by person making such claim. When no tax has been withheld because of such claim, certificate nevertheless shall be forwarded to Collector of Internal Revenue for district in which withholding agent resides.

Certificate Form 1088 is provided for this purpose. (T. D. 2412.)

Tax to be Deducted Except to Extent of Exemption Claims: Whenever coupons accompanied by certificate of an individual, resident or citizen of the United States are presented to debtor or withholding agent for payment, the debtor or its withholding agent shall deduct and withhold amount of normal tax except to the extent of exemption claimed in certificate. (Art. 44, Reg. 33.)

Deduction of Tax at Source Applies Only to Normal Tax on Individuals: Deduction and payment of tax at source of income applies only to the normal tax imposed upon individuals. (Art. 29 Reg. 33.)

Interest Which Constitutes an Allowable Deduction from gross income under Federal Income Tax Law is amount actually paid within the year on the maximum principle ascertained by adding the full amount of the paid up capital stock at the close of the year, one-half of the interest bearing indebtedness also then outstanding and such interest as actually paid on indebtedness wholly secured by collateral subject of sale in the ordinary business of the corporation.

Interest payments of this character, being allowable deductions in gross income, will not be taken into account as part of cost of manufacture for reason that to consider them an element in the cost of manufacture and to deduct them from gross income as specific items would in effect result in a double deduction of the amounts involved.

A corporation is not permitted to include in its deduction the rental value of property which it owns and occupies, nor is it permitted to deduct from gross income the interest which the capital invested or employed would earn if it were otherwise invested.

It therefore follows that a corporation cannot take into account as part of cost of manufacture any possible earnings which might accrue on its capital or investment had such capital been so placed as to earn a given rate of interest. (T. D. 2137.)

Entertainment Money: So-called spending or "treating money" advanced by corporations to salesmen as part of selling expense of products is an allowable deduction in return of income by such corporation. There must be some showing that allowances claimed as deduction were actually expended for that purpose. (T. D. 2090.)

Import Duties: Import duties or taxes are not deductible under items of taxes paid during the year. They should be included in arriving at cost of goods under Item 4 (Expenses). (Art. 155, Reg. 33.)

Permanent Buildings On Leased Ground: The cost of erecting permanent building on ground leased by company is a proper deduction as a rental charge, provided such buildings are left on ground at expira-

tion of lease as a part of rental payment. In such case, cost will be pro-rated according to the number of years constituting term of lease, and annual deductions made accordingly. (**Art. 115, Reg. 33.**)

Furniture and Equipment, Renewal of: An ordinary amount expended by insurance company for renewal of office furniture and equipment held not asset but an expense of maintenance which it is entitled to deduct in ascertaining its net income. (**Mutual Benefit Life Insurance Co. v. Herold, 198 F. 199.**)

Repairs: Incidental repairs which neither add to the value of property nor appreciably prolong its life, but keep it in operating condition, may be deducted as expenses. (**Art. 131, Reg. 33.**)

Life Insurance in Favor of Corporations: In cases where in corporations paid premium on insurance policies, insuring in favor of corporations, the lives of officers or others, such premiums may be allowably deducted from gross income of corporation paying same.

In all such cases, proceeds of policies when paid at maturity or upon death of insured to corporation shall be returned by said corporation as income for year in which proceeds are received. (**T. D. 2090.**)

Salaries Paid Officers and Employees: Such amounts as corporations actually pay as fair and reasonable compensation for services rendered by officers and employees constitute allowable deductions from income. Salaries as here defined should not depend upon profits earned by corporations, the presumption being that these services rendered are of equal value regardless of the fact that net earnings of the corporation may differ from year to year. (**Commissioner W. H. Osborn, February 2nd, 1915.**)

Salaries Paid to National Guard Men While on Federal Duty Are an Allowable Expense: In case a corporation continues to pay an employee his salary or part thereof during his service in the U. S. Army, it is held that same will be considered a necessary expense of operation of the business of the corporation, and as such will be an allowable deduction in its return of annual net income. (**Acting Commissioner J. E. Fletcher, October 4th, 1916.**)

Donations for Welfare of Employees: Donations by corporations which legitimately represent the consideration for benefit going directly or indirectly to corporations as an incident of its business, are allowable deductions from gross income in ascertaining net income, as donations to hospital upon consideration that employees of corporation are to have ward for use in case of accident or illness. The absence of consideration moving in some form to corporation will make donation mere gratuity. (**T. D. 2090.**)

Donations Made for Purposes Connected with Operation of Property Limited to Charitable Institutions, hospitals, or educational institutions, conducted for benefit of employees of a corporation, or their dependents, shall be proper deductions under head of expense in return of corporation. (**T. D. 2090.**)

Pensions to Ex-Employees: Amount paid for pensions to retired employees or their dependents on account of injuries received by employees are proper deductions as necessary expenses. (**T. D. 2090.**)

Railroads, Deductible and Non-Deductible Expenses of: Deductions for expenditures for addition and betterments to property, such as expenditures for sidings or spur-tracks, are not authorized.

The payment for labor and materials that go into actual operating of road and property are deductible. Maintenance means upkeep or preserving of condition of property to be operated, and does not mean addition to equipment or improvements of former condition of road.

Where old rails are replaced with new heavier rails, wooden bridges and culverts with concrete steel bridges and culverts the rule is that

cost of renewal with like kind of quality is allowable, but excess cost is not allowable deduction.

Amounts expended for improving and adding to property, such as building new stations, new shops, installing new machinery, are included in income. (T. D. 2210.)

Public Utility Under Contract with State, etc.: In the case of public utility, operated under contract with a city, state, territory or District of Columbia, or a city where a portion of net earning of such public utility is payable under such contract to state, territory, etc.; amounts so paid may be deducted by public utility operating under such contract as an "expense of business." (T. D. 2090.)

Taxes: Paid During the Year Are Deductible: For the purpose of claiming as allowable deduction amounts paid to the collector and amounts withheld at source on account of income tax, it is held that amounts of both classes are paid within meaning of the law, in the year in which assessment is made and tax paid to the collector of internal revenue. (T. D. 2135.)

Taxes: Excise and Franchise Taxes Are Deductible: The ruling of this office previously made to the effect that banking corporations are not permitted to deduct from gross income the amount of taxes paid for stockholders on the value of their capital stock outstanding, applies only to taxes levied upon value of the capital stock and is not intended to operate so as to prevent banking corporations from deducting from their gross income any State tax imposed against the corporation itself, on an excise or franchise tax; that is, a tax which corporation is required to pay to the State in order that it may transact business within the State. (T. D. 2152.)

Reserves for Taxes Are Not Deductible: Reserves for taxes cannot be allowed, as the law specifically provides that only such sums as are paid within the year for taxes shall be deducted. (Art. 156, Reg. 33.)

Cost of Live Stock purchased for resale is an allowable deduction, under item of expense, but money expended for breeding purposes is regarded as capital invested, and the amounts so expended do not constitute deductions.

Live Stock purchased for any purpose, and afterwards dies, and the cost thereof has not been claimed as an item of expense, the actual purchase price of such stock less any depreciation, which may have previously been claimed may be deducted as loss.

Property Destroyed by order of a State or the United States may be claimed as a loss, but if reimbursement is made, in whole or in part, the amount received shall be accounted for as income in the year in which reimbursement is made.

Deductions Allowed to Citizens or Residents: Taxes paid to the United States or any state or subdivision thereof.

Customs Duties: The custom duties paid during the year by an individual are allowable deductions as taxes or part of cost price, if individual is engaged in importation of goods and merchandise. This ruling supersedes prior instructions given on this point. (December 22nd, 1914.)

Losses Deductible by Citizens or Residents in Business or Through Casualties: Losses arising from fire, storms or shipwreck not compensated by insurance or otherwise, is deductible.

Business has been defined; "as that which occupies and engages the time, attention and labor of any one, for the purpose of a livelihood, profit or improvement; that which is his personal concern or interest; employment, regular occupation, but it is not necessary that it be his sole occupation."

The doing of a single act not pertaining to the particular business

of the person doing same, is not considered as engaging in business. "In trade" is synonymous with business. (T. D. 1989.)

Loss to be deductible must be actual and not speculative.

The term "In trade" as used in **Treasury Decision 2005**, is held to mean trade or trades in which person making return is engaged; that is, in which he has money invested and to which he devotes at least part of his time and attention. A person may engage in more than one trade and may deduct losses incurred in all of them provided that above requirements are met. As to losses on stocks, grain, cotton, etc., it incurred by person engaged in trade to which buying or selling of same are incident or a part of the business, as by member of a stock, grain or cotton exchange, such losses may be deducted. (T. D. 2090.)

Neither the investment by an individual in stock of a company, nor employment of him by company in any official capacity, can serve to make the business in which company is engaged a matter of his individual business. (T. D. 2135.)

Losses Deductible by Citizen or Resident Incurred Outside of Business: A loss is none the less actual because an individual cannot divest himself of the possession of worthless stock by sale, but that condition alone does not give the loss in question such a character as appears to the Department to have been contemplated by the Income Tax Law. (T. D. 2135.)

Deductible Loss, Method of Determining Amount Of: Loss is the difference between selling price and cost where selling price is less than cost.

Taxes: Not Deductible: Taxes paid for local benefits are not deductible. (Art. 153, Reg. 33.)

Deduction, of Tax at Source Is at the 2 Per Cent Rate on All Taxable Income Paid on or After January 1st, 1917: Under the act of September 8th, 1916, withholding agents are required to withhold the normal tax of 2 per cent on all income subject to withholding paid on or subsequent to January 1st, 1917, regardless of the date on which the income became due and payable. (Commissioner W. H. Osborn, December 18th, 1916.)

Organization Expenses Represent the Cost of the Charter or Franchise of the Corporation, and Do Not Constitute an Allowable Deduction From Gross Income: It is HELD that "organization expenses" constitute a capital investment, such expenses being offset by the assessed value of the corporation's franchise, and intangible assets of a somewhat permanent character and in many instances of substantial value. Such expenses are very similar in character to the discount at which the stock issued by the company is being sold, the only effect of such expenses and discounts being to reduce the amount of capital available for use and employment in the business of the corporation. The discount at which the stock is sold is not a loss sustained within the meaning of the law, and, therefore, not deductible. Likewise, expenses incident to and connected with the incorporation and organization of the company are not "ordinary and necessary expenses of maintenance and operation," which are the only "expenses authorized by the income tax law to be deducted from gross income."

Insurance Companies, Reserve Deductible By: William McCoach, Collector of Internal Revenue, Petitioner, vs. Insurance Company of North America. U. S. Supreme Court, June 11, 1917.

This was an action brought by respondent, a fire and marine insurance company of the state of Pennsylvania, to recover a part of the excise taxes exacted of it for the years 1910, 1911, under the act of August 5, 1909, under the provision of the laws of Pennsylvania the respondent is required to return each year as an item among their liabilities the net amount of unpaid losses and claims whether actually adjusted, in the process of adjustment or resisted. The court held,

that the losses in immediate contemplation but as not yet actually sustained, were not intended to be treated as part of the reserve funds, that term rather having reference to the funds ordinarily held as against the contingent liability on outstanding policies. That such provision as hereinbefore referred to was not meant to create a reserve fund and would not be permitted to be deducted from the gross income in making a return of the annual net income under the federal income tax law.

"Head of Family" Definition: Under Act of September 8th, 1916, head of family is entitled to claim a personal exemption of \$4,000 for the purpose of normal income tax (as amended by the Act of 1917, \$200 for each dependent minor child).

Head of family is held to be a person who actually supports and maintains one or more individuals who are closely connected with him by blood relationship, relationship by marriage or by adoption, and whose right to exercise family control and to provide for these dependent individuals is based on some moral or legal obligation. (T. D. 2427.) January 4th, 1917.

Depletion. Individuals and Corporations From Whose Property Oil or Gas Is Produced, May Deduct From Gross Income on Account of Depletion, Such a Percentage of the Fair Market Value as of March 1, 1913, of the Oil or Gas Properties, if Acquired Prior to That Date, or of the Cost of Such Properties, if Acquired Subsequent to That Date, as the Reduction in Flow and Production of the Year for Which the Return Is Made, Is a Percentage of the Flow and Production of the Previous Year.

The purpose of Section 5, deduction "eight," and Section 12, deduction "second" of Title 1, Act of September 8th, 1916, is to afford a means whereby the individual or corporation owning oil or gas producing property may, during the period of operation, deduct from gross income the cost of, capital actually invested, in the natural deposits, if the investment was made subsequent to March 1, 1913, or the fair market value as of March 1st, 1913, if purchased prior to that date, the measure of deduction being the reduction in the flow and production.

The annual deduction authorized by the said provision must be reasonable and not in excess of such a percentage of the cost or value, as the case may be, and is herein defined, of the oil or gas producing properties as indicated by the reduction in the original flow or settled production of one year as compared with that of the preceding year.

For the purpose of this deduction, note may be taken of the reduction in flow and production of such individual wells as were producing oil or gas during or at some time within the year, of groups of wells or of all wells in the field or territory embraced in the same ownership. If tested by the aggregate flow of all the wells in the field or territory, embraced in the same ownership. If tested by the aggregate flow of all of the wells in the field or territory, owned by an individual or corporation and new wells as shall have been developed during the year, it is possible that at the end of the year there will have been no reduction in flow and production, in which case, under the specific provision of the law hereinbefore alluded to, and under which the depletion deduction is measured by the reduction in flow and production, there can be no deduction for depletion.

Hence, in the case of a field or territory in which new wells are being drilled, if the depletion deduction is to be availed of in the return of annual net income, each individual well or group of wells in operation at the beginning of, or brought in during the year, if the flow and production of the group of wells is so assembled as to be tested, must be tested at the end of the year in order that the decline in the flow and production may be determined.

New wells or new groups of wells brought in during the year may be tested as soon as they have reached the stage of settled production or regular flow and then again at the end of the year. The decline in

flow of production, if any, as indicated by these tests, will be reduced to a percentage basis and a like percentage of the capital invested in the oil or gas property will constitute an allowable deduction from the gross income of the year on account of depletion. Thus if the decline in the flow and production during the year of, say, ten wells costing \$100,000, has been 5 per cent as compared with the production of flow as indicated by a test made at the beginning of a period, then 5 per cent of \$100,000 or \$5,000 will, for the year for which the computation is made, constitute an allowable depletion deduction in favor of the individual or corporation owning and operating the property.

If the wells are not so situated that their flow and production, may be assembled in order to test and ascertain the reduction in the outfit as a basis for computing the depletion, it will be necessary for the corporation or individual owning the property and claiming a depletion deduction, to take an accurate gauge of the production and flow on each well at a certain same period of each year, and by comparing this gauge with that of the previous year, determine the percentage by which the production of flow has been reduced. This having been done as to all other wells in operation, an average percentage rate in reduction in flow and production will be ascertained, and this rate will be applied to the capital invested, that is, the value of the oil or gas property as of March 1, 1913, or the cost of the same, if acquired subsequent to that date, for the purpose of determining the amount which may be allowably deducted from gross income by such owning individual or corporation on account of depletion.

In case of a field or territory fully developed and in which no new wells are being drilled, a comparison of the quantity of oil or gas produced during the year for which the computation is made with the quantity produced during the last preceding year, will disclose the reduction, and the percentage thus indicated of the reduction in flow and production of such field, will be the measure of the depletion deduction to be taken by the owner with respect to the capital invested in such field.

Notwithstanding the fact that the drilling of new wells may offset the reduction in the production and flow of the older wells in the field not fully developed, the said provisions of the law does not authorize, and this office cannot permit, a depletion deduction to be taken so long as the flow in production of the unit, be it a well or group of wells, or the entire territory is as great during the year for which the return is made, as it was for the preceding year.

The depletion deduction in all cases until the capital invested is extinguished, will be such a percentage of the unextinguished capital as the reduction in flow of production of one year is a percentage of flow or production of the previous year.

Every individual or corporation entitled to a deduction for depletion on account of deduction in flow or production of oil or gas shall keep an accurate ledger account, in which shall be charged the fair market value as of March 1, 1913, or the cost if the property is acquired subsequent to that date, of the property whose value declines with the removal of the natural deposits. The account shall be credited with the amount of the depletion deduction claimed and allowed each year, to the end that when the credits to the account equal the debits no further deduction for depletion with respect to this property and the capital invested in it, will be allowed.

There can be no revaluation for the purpose of this deduction if it should be found that the estimated quantity of oil or gas contained in the property was understated at the time the value was fixed or at the time the property was acquired.

The provision of the law authorizing a depletion deduction, designed as it is to provide a means whereby the invested capital of an individual or corporation may not be subject to the tax imposed by this title, does not apply to individuals or corporations who are operating oil or gas

properties under lease, since in those cases the operator has no capital invested in such property. By capital invested, as herein used, is meant the fair market value of the properties as of March 1, 1913, if acquired prior to that date, on the actual cost if acquired subsequent to that date, as it relates to the owner in fee of the properties.

Lessees will, however, be permitted to deduct from gross income each year, a reasonable allowance for depreciation, which depreciation applies to the physical property, including rigs, tools, machinery, and other equipment necessary to the operation of the wells or fields. If lessees in order to secure the right to enter upon, explore, develop, or operate gas or oil properties, paid, or shall pay a bonus in addition to the royalties the amount of such bonus so paid may be ratably distributed over the life of the lease or over the productive life of the property, and the lessee may deduct annually as a rental payment and aliquot part of the amount of the bonus so paid, until such amount has been extinguished.

The incidental expenses of drilling wells, that is, such expenses as are paid through wages, fuel, repairs, etc., which do not necessarily enter into and form a part of the capital invested or property account, may, at the option of the individual or corporation owning and operating the property, be charged to property account subject to depreciation, or be deducted from gross income as an operating expense. The cost of drilling dry or non-productive wells may be deducted from the gross income as a loss.

To each return made by an individual or corporation owning or operating oil or gas properties there should be attached a statement showing first, (a) the fair market value of the property (exclusive of machinery, equipment), as of March 1, 1913, if acquired prior to that date, or (b) the actual cost of the property, if acquired subsequent to that date; second, how the fair market value of the property as of March 1, 1913, was ascertained; third, the quantity of oil or gas produced during the year for which the return was made; fourth, the quantity produced during the year immediately preceding; fifth, how the depletion deduction claimed in the return was computed, whether upon the decline in flow and production of individual wells, group of wells, or the entire field; and sixth, any other data which would be helpful in determining the reasonableness of the depletion deduction claimed in the return.

If the operator is a lessee, that fact should be stated and an explanation given as to the basis and property upon which any depreciation deduction is claimed. It being understood as hereinbefore indicated that the depreciation relates to the loss due to the use, wear and tear of physical property, and that the lessee is not entitled to any deduction for the depletion or exhaustion of the oil or gas deposits, but may deduct annually as a rental payment an aliquot part of any bonus paid for the right to enter upon, explore, develop and operate oil or gas territory, as well as the royalty payments made to the lessor for the oil or gas removed from such property; provided, the entire proceeds from the oil or gas produced during the year are returned in the gross income of the operator. (T. D. 2447.)

Depreciation: Deduction for depreciation should be the estimated amount of loss accrued during year to which return relates, in value of property in respect to which deduction is claimed, that arises from exhaustion, wear and tear, or obsolescence out of uses to which property is put, and which losses have not been made good by payments for ordinary maintenance and repairs deducted under heading of expenses. This estimate should be formed upon assumed life of property, its cost and use. Expenses paid in any one year making good exhaustion, wear and tear, in respect of which any deduction for depreciation is claimed, must be included in deduction for expense of maintenance and operation of property, but must be made out of accumulated allowance deduc-

tions for depreciation in current and previous years. (Art. 129, Reg. 33.)

Depreciation Allowance, To Be Deductible, must be, as nearly as possible, the measure of loss due to wear and tear, and should be so entered on books as to constitute a liability against assets of company. Annual allowance deductible on this account should be in such an amount as that the aggregate of annual allowances deducted during the life of property with respect to which it is claimed will not, when property is worn out, exceed its original cost. (Art. 130, Reg. 33.)

A reasonable allowance for depreciation must be determined on basis of cost of property and probable number of years constituting its life. In other words, the amount of allowable depreciation deduction thus ascertained will be credited to a depreciation reserve account, against which account will be charged the cost of renewing or replacing the property with respect to which depreciation is claimed.

It is not contemplated that such ordinary incidental repairs as keep property in operating condition shall be charged to this depreciation reserve, but such cost may be charged to expense of operation and maintenance.

This office recognizes the fact that a building, or a piece of machinery or other equipment, as a whole, may deteriorate in value and usefulness by reason of wear and tear, regardless of the fact that certain minor component parts may be replaced. The depreciation deduction authorized by law therefore contemplates the creation of a fund that will renew original property when it has been worn out or exhausted, regardless of restoration of parts that may have been made in the meantime.

Hence it is held that in addition to depreciation deduction intended to cover cost of property as a whole, expenses of incidental repairs will not add to the value of property, but merely keep it in operating condition, may be allowably deducted from gross income of expense of operation.

It is barely possible in some instances that worn out parts of a machine or similar equipment may be renewed one after another until original machine is swallowed up in new parts and said equipment is then in as good operative condition as it originally was. In this case if cost of renewal of parts was charged to operative expense no deduction on the part of depreciation should be claimed or allowed as to such equipment.

This would appear to be true in case of pipe-lines, worn out pipe coverings and similar articles of equipment. By replacing one joint of pipe after another, all may be replaced, and if expenses which are deducted are as operating expenses, any depreciation fund that may have been reserved will remain unused. So in cases of this kind, if depreciation reserve is set up to cover property that may be renewed or restored until whole is renewed, the cost of renewal of parts should be charged to depreciation reserve funds, and will not be considered incidental expenses within the meaning of the regulations. (Art. 131, Reg. 33.)

Incidental repairs, as used in regulation cited, refers only to those repairs which, as the term signifies, only incidental to the operation of property, and which will not, if continued as component parts wear out, and are restored, make permanent the property.

Hence, depreciation deduction allowable in respect to any property is such an amount as in the aggregate, when property as a whole is worn out, will replace or return to corporation capital invested in it. That is to say, the depreciation deduction allowable under the law and regulations should be only such an amount as will take care of loss due to general wear and tear, which to no extent is compensated by repairs.

The rules of this office contemplate that annual deduction for depreciation may be made to provide for wear and tear, the amount of such

deduction to be determined upon the basis of the probable life of the property. If it shall occur that a property becomes obsolete or worthless before its estimated probable life shall have expired, a deduction representing the difference between the cost of the property and the amount previously charged on account of depreciation may be deducted as a loss. (**Commissioner W. H. Osborn, September 19, 1916.**)

Revenue Officers and Examining Agents in the examination of books of a corporation will, therefore, determine whether or not deduction claimed in their return is a fair and reasonable measure of loss sustained during the year, and if they find that amount claimed in their return is a fair and reasonable measure of the loss, and that it is not written off on the books of the company, they will permit the corporation to open its books, if it so desires, and make such entries as will constitute amount sought to be deducted, a liability against the assets of the Company and charged against the income in the year in which return is made. Sufficient time to make such correcting entries should be given to the corporation before report of examination is made to this office, and any recommendation as to additional taxes should be made accordingly.

If Corporation refuses or neglects to reopen its books and write out depreciation claimed in return, or a reasonable amount measuring loss sustained on this account, amount claimed in return will be disallowed. The correcting entries for each year, if made, must be such as would have been made had they been made at time books were closed.

The foregoing instructions do not contemplate that a depreciation deduction claimed is to be allowed in every case simply because written off. If upon examination, taking into account perishable property and use it is put to, it appears that amount written off is in excess of reasonable allowance, the excess should be disallowed.

When amount claimed for depreciation has been written off on books of Company, either prior or subsequent to making of the return, it remains for Revenue agent and examining officers to determine whether or not this amount is such as is contemplated by meaning of the law, as constituting an allowable deduction, and if it does, it should be allowed and report made accordingly. (**Letter to Collectors, August 27, 1914.**)

Depreciation; No Fixed Percentages for Computing: This office has no fixed definite rate by which an allowable deduction on account of depreciation in value of any class of property subject to wear and tear is to be computed.

The rule which is generally followed by Corporations contemplates an allowable depreciation deduction within meaning of Federal Income Tax Law shall be computed on basis of the cost of property, and probable number of years constituting its life. (**T. D. 2152.**)

Real Estate; Depreciation of and Buildings Thereon: The Federal Income Tax Law specifically provides that in making the return of annual net income, corporations may deduct, among other items, all losses actually sustained within year and not compensated by insurance, or otherwise, including a reasonable allowance for depreciation by use, wear and tear of the same.

Under this provision of the law assets of any character which are not affected by wear and tear, are not subject to depreciation authorized by the act. Real estate as such, and as distinct from improvements thereon, is not reduced in value by reason of wear and tear, and it, therefore, follows that said allowance in the case of real estate does not apply to the grounds, but is intended to measure improvements which decline in value is due to wear and tear of same. In determining cost of real estate, in most cases no segregation is made of cost of buildings as separate and distinct from cost of grounds upon which said buildings stand. In such cases, where actual cost of buildings or improvements at time they were taken over by the corporation cannot be definitely determined, it will be sufficient for purpose of determin-

ing depreciation to be used in computing amount which will be deductible from gross income to estimate the actual value of the buildings or improvements as of January 1st, 1909, provided the buildings were in existence at that time, and provided that value placed upon such buildings shall not be in excess of the cost of such buildings, less an amount measuring depreciation sustained. (T. D. 2137.)

Depreciation in Book Values: Depreciation applies only to such tangible property as is subject to wear and tear, and is not to be construed as recognizing any gain or loss due to fluctuations in market values or arbitrary changes in book value of securities and like assets, the gain or loss with respect to which will be determined only when such assets mature or are sold or disposed of. (T. D. 2077.)

Bonds and securities are not subject to wear and tear within meaning of Federal Income Tax Law, and therefore this depreciation does not apply to any shrinking in their value. Shrinkage in value of securities does not constitute a loss actually sustained within the year. A shrinkage in the value of bonds or like securities does not constitute deductions from gross income either as a loss or other depreciation.

The fact that bonds and similar securities were written up at direction of the Comptroller of the Currency or State Banking Department is not material. A mere book entry does not constitute either a loss or gain for purpose of Income Tax Law. The fact bonds were written off does not imply that they are a total loss, nor is this conclusive proof that any loss occurred during the year for which return is made.

Losses of this character are only ascertainable when securities mature, are disposed of or cancelled. (T. D. 2152.)

District irrigation bonds, as a rule, if not always, are a lien upon real estate affected by irrigation projects, and until corporation has taken such steps as are necessary to protect its rights and force collection of bonds, it will not be warranted in writing out of its assets and deducting as a loss the face value, or any other arbitrarily ascertained amount representing such loss in value of such bonds from its taxable income. (T. D. 2152.)

Depreciation Reserve Fund, Investing of: The investment of depreciation reserve funds in the concern's own plant in the way of additions and extensions appear to be such a diversion of the funds as is contemplated by Arts. 132 and 133 of Reg. 33, and T. D. 1943.

Investment in additions and extensions are primarily capital investments, and the fact that corporation is investing its depreciation fund in such improvements would seem to indicate that amounts set aside on account of depreciation were in excess of a reasonable allowance which the law contemplates. A corporation may deduct from its gross income, and when it shall appear by reason of the investing of its depreciation fund as set forth, it actually adds to the value of the capital assets it will be insisted upon that the amount by which assets are increased on this account shall be returned as income and subject to tax. (T. D. 2137.)

Depreciation of Good Will: Good will represents the value attached to a business over and above value of physical property, and is such an entirely intangible asset that no claim for depreciation in connection therewith can be allowed. (Art 136, Reg. 133.)

Good will does not represent a value attaching to physical property, but is an intangible asset, whose value separate and apart from business with which it is connected is not capable of determination. For purpose of income tax it is capable of neither appreciation nor depreciation. Hence an amount claimed to represent its decline in value is not an allowable deduction from gross income in computing tax liability.

Depreciation of Patents: An allowance for depreciation of patents will be made on the following basis: Deduction claimed for exhaustion of capital assets as represented by patents to be made in return of annual net income of the corporation for any given year shall be one-seven-

teenth of the actual cost of such patents reduced to a cash basis. Where patent has been secured from Government by corporation itself, its cost would be represented by various government fees, cost of drawings, experimental models, attorney's fees, etc. Where patent has been purchased by the corporation for a cash consideration, the amount will represent the cost. If corporation has purchased a patent and made payment in stock or other securities, the actual cash value of such stock or other securities at time of purchase will represent cost of patent to corporation. (**Art. 137, Reg. 33.**)

With respect to depreciation of patents, one-seventeenth of the cost is allowable as a proper deduction each year until the cost of the patent has been returned to the corporation. Where the value of the patent has disappeared through obsolescence, or any other cause, and the fact has been established that the patent is valueless, the unreturned cash investment remaining in the patent may be claimed as a total loss from gross income, in the return of annual income for the year during which the fact as to loss shall be established, such unreturned cash value to be fixed in accordance with the proportion, that number of years which patent still has to run bears to full period of seventeen years. (**Art. 138, Reg. 33.**)

Patents, Computation of Depreciation of: In the case of a patent which at the time of its purchase by the corporation had to run it will be proper for the corporation to deduct each year from its gross income one-tenth of the actual cost of such patent. The regulation in relation to this subject contemplates the actual cost of assets with respect to which depreciation is claimed shall be ratably distributed over the number of years constitutes the life of the asset or the number of years of its life remaining at the date of purchase as the case may be. (Acting Commissioner David A. Gates, September 24, 1916.)

Depreciation of Timber Lands: Corporations holding tracts of timber lands and removing therefrom and selling, or otherwise disposing of the timber, will be permitted to deduct from their gross income on account of depreciation or depletion an amount representing the original cost of such timber, plus any carrying charges that may have been capitalized or not deducted from income. The purpose of depreciation deduction is to secure to the corporation, when timber has been exhausted, an aggregate amount which, plus the salvage value of land, equal to capital actually invested in such timber land. (**Art. 139, Reg. 33.**)

When an amount sufficient to return this capital has been secured through annual depreciation deductions, no further deduction on this account shall be allowed. For the purpose of increasing the deduction on this account no arbitrary increase in value shall be made, unless such increase in value shall be returned as income for the year in which, increase in value was taken upon books. (**Art. 140, Reg. 33.**)

The difference between original cost of property, and its increased fair market value at the time of incidence of tax, may be properly added to the original cost in determining the amount to be deducted on account of depreciation of property, or for the restoration of capital in computing net income from sale of such property. (E. J. Doyle, collector, v. Mitchell Brothers Company, 235 Fed. 686.)

Dividends Received From Holding Company Declared From Funds Acquired as Dividends From Operating Company, Declared From Funds Acquired Prior to March 1, 1913: If an operating company distributes the earnings or profits which accrued to it prior to March 1, 1913, the amount so distributed will not be subject to income tax as a dividend in the hands of the holding corporation; but, as a dividend so received by the holding corporation represents net earnings or profits accrued to it after March 1, 1913, the dividends of the holding corporation paid from these earnings are taxable, in the hands of its shareholders when distributed to them. The tax liability for dividends of the shareholders of each corporation is confined to the relations under which the re-

spective stockholders shared dividends, regardless of the source from which the immediate corporation received them. (Deputy Commissioner L. F. Speer, July 23, 1917.)

Dividends Paid Out of Amount Set Aside to Cover Depreciation and Depletion Constitute Taxable Income to the Stockholder Receiving Them: Referring to the practice of certain corporations of declaring dividends out of reserves set aside to meet depreciation and depletion of property, and of advising stockholders that such dividends represent a distribution of capital assets attention is directed to the ruling made herein as follows:

All such dividends received by stockholders declared out of such reserves accumulated subsequent to March 1, 1913, constitute income to the stockholder under the Act of September 8, 1916, and must be accounted for in the returns of net income.

A stockholder's investment is in the stock of a corporation. If he disposes of his stock for more than its fair market value on March 1, 1913, or its cost if acquired since that date, the profit realized must be returned as income; if he disposes of it at a loss, the loss sustained is deductible from gross income within the limits of the taxing act. In computing the profit or loss sustained there must be taken into account dividends paid from reserves accumulated prior to March 1, 1913, which were not returned as income for the year in which received. Under the provisions of the Act of September 8, 1916.

All rulings in conflict herewith are hereby revoked. (T. D. 2540.)

Dividends Declared and Paid by Subsidiary Taxable to Parent Corporation When Received: *Southern Pacific Co. v. Lowe*, U. S. District Court, N. Y., 238 Fed. 847.

The Central Pacific Co. is a subsidiary of the Southern Pacific Co. The latter has owned all the stock of the former ever since its incorporation. The subsidiary kept no bank account, but its earnings were deposited with the bank accounts of the Southern Pacific, which advanced the necessary funds, whenever needed by subsidiary, for any operations or expenses, or for additions or betterments.

In January, 1914, certain dividends were paid by the subsidiary to the Southern Pacific, on which the government demanded a tax.

The Southern Pacific contended that since it completely owned and controlled the subsidiary, and the money was in its actual possession at all times, it was neither richer nor poorer, by the declaration and the payment of these dividends; that the dividends were not earned during the period of taxation, and that they were paid from surplus resulting from the operations of the subsidiary prior to July 1st, 1909. The court HELD:

That the dividends declared by the subsidiary, although the funds representing the same were in the possession of the Southern Pacific at all times, it did not become legally entitled to the earnings of the subsidiary until the dividends were declared in 1914. (2) Although the money distributed as dividends in 1914 accrued to the subsidiary prior to its fiscal year beginning July 1st, 1909, it represents earnings and not an increase in the value of capital assets, and the dividends are taxable to the recipient when received in 1914.

Dividends Paid by a Lessee, as a Rental Equivalent, Direct to Shareholders of a Corporation Leasing Its Properties to Another, Constitute Income to the Lessor Corporation: *Rensselaer & Saratoga R. R. Co. vs. Irwin*, Collector, 239 Fed. 739, March 5, 1917.

The petitioner leased its property to the Delaware & Hudson Company which agreed the interest upon and discharge the bonds issued by the former, to maintain the right of way and building, and to pay direct to each stockholder dividends at the rate of 8 per cent per annum on each share of stock. The lessor received \$1,000 per annum from the lessee to enable it to maintain its corporate existence. The lessor maintained that the dividend payments to its stockholders were

not income to it, and paid income tax assessed thereon by the collector under protest. The court held upon a demurrer that the moneys paid by the Delaware & Hudson Canal Company to the petitioner are rents or compensation to said company for the use and occupation of its property, and as the plaintiff corporation pays no operating or repairing expenses, constitutes aside from the interest paid net, net income within the meaning of the law in question. It is immaterial so far as that question is concerned that such dividends are fixed as to the amount by the lease and by its terms paid directly to such stockholders.

It is also immaterial that the plaintiff corporation is not possessed of money or other cash revenues with which to pay the tax. It has power to borrow.

The corporation could not exonerate itself for liability for this tax subsequently imposed under a law thereafter enacted by making a lease of its property which provides for the payment of all its surplus revenues directly to its stockholders.

Dividends Received by Stockholder from 1913 Paid from Surplus Earned Prior to January 1, 1913, Constitutes Income to the Stockholder. Gulf Oil Corporation vs. C. G. Lewellyn, Collector. C. G. Lewellyn vs. Gulf Oil Corporation. United States Circuit Court of Appeals, Third Circuit, March Term, 1917. 242 Fed. 709.

For a number of years the corporation has owned all the stock (except directors' shares) of five subsidiaries, and it owned this stock while the subsidiaries were accumulating the earnings which were afterwards transferred to the corporation in the form of dividends. The previous earnings had been used from time to time in carrying on, extending and developing the several enterprises in which they were engaged and the earnings were properly employed for these purposes. In January, 1913, the corporation decided to have these earnings transferred to itself, and thereupon the subsidiaries each and every one of them declared dividends.

The corporation made a return to the government of its income for 1913, certifying that the return did not include the dividends referred to, and giving as a reason that they have been declared and paid out of earnings and surplus that had accrued before January 1, 1913. The collector, however, demanded a total tax of \$114,244.40 from the corporation for the year 1913, basing the assessment solely on the receipt of these dividends. This action was brought to recover the payment made under protest as assessed.

The court held that whether a distribution of corporate property is to be regarded as a dividend or not, does not depend upon the status of the person who receives a share, but on what is done by the distributor. In the first instance the money of the property is owned by the distributor and as owner he has the power to decide what is to become of it. After the stockholder receives it he may use it as he likes, but it comes into his hands as a dividend whether he be an individual or a chartered company. We conclude, therefore, that the Gulf Oil Corporation received the property in question in the character of a separate stockholder in the subsidiaries and received it as a dividend. And as such as taxable income under the income tax law.

Co-operative Dairies and Like Organizations: Co-operation dairies, no matter how organized, do not appear to fall within the exempt class, and therefore are required to make returns.

In preparing returns, such dairies may include in their reductions from gross income amount actually paid to members and patrons for milk, but any amount retained at end of the year over and above expenditures will be returned as net income upon which tax shall be paid.

Insofar as article 92 is in conflict with this ruling, it is hereby revoked. (T. D. 1996.)

Exemption From Income Tax of Corporation Dividends Paid in the Form of Liberty Bonds: The Attorney-General holds that the stock-

holders of a corporation receiving dividends declared payable and distributable in bonds issued under the Act of Congress, approved April 24, 1917, come within the Income Tax Law and are taxable.

2. That corporations owning these bonds to that extent are exempt from excise taxes, franchise taxes, and other corporation taxes of the United States and of the several States. (T. D. 2512.)

Application of Exemption When Several Members of the Family Invest in New Liberty Bonds: Husband and wife each owning in own right liberty loan bonds and certificates not exceeding \$5,000 each entitled to exemption provided by Section 7 (b) Loan Act. Minor children having separate estates each entitled to same exemption. (Secretary of the Treasury, O. T. Crosby, October 8, 1917.)

Specific Exemption of \$200 for Each Child Applicable to Both 2 Per Cent Normal Taxes: Exemption of \$200 for each child. An additional exemption of \$200 for each child. An additional exemption of \$200 provided for by the act for each child applies to the normal tax of 2 per cent imposed by the Act of September 8, 1916, and to the additional normal tax of 2 per cent imposed by the Act of October 3, 1917. (T. D. 2547.)

Specific Exemption: In *Hymen Cohen v. John Z. Lowe, Jr., Collector of Internal Revenue*, Southern District of New York, on July 18th, 1916, 234 Fed. 174. Court HELD that before assessing additional tax on excessive net income over twenty thousand (\$20,000.00) dollars, an exemption of three thousand (\$3,000.00) dollars should not be allowed, as in the case of the normal tax.

Interest on United States Bonds or Bonds of State or Political Subdivision, Is Exempt: Income derived from the interest upon obligation of a state, any subdivision thereof, or the United States, should not be included in return as gross income.

Where municipality purchases a public utility subject to a mortgage, mortgage retains original character, although municipality assumes the burden of the indebtedness. (T. D. 2090.)

Income derived from interest upon the obligation of a state, county or city or any other political subdivision thereof, or of the United States or its possessions, is not subject to the income tax, and therefore a certificate of ownership in connection with the coupons or registered interest orders for such interest will not be required.

Coupons should clearly show on their face whether they are issued by the United States or any political subdivision thereof. If they do not clearly show this, then ownership certificates should be required. (T. D. 1892.)

"Political Subdivision" of State: The term "Political Subdivision" includes such special assessment districts created by proper authority of the state, acting within its constitutional rights, for the purpose of carrying out portions of those functions of the state which by long usage and inherent necessities of government have always been regarded as public.

Levy and school districts are held to be subdivisions of a state, within the meaning of the income tax law. (T. D. 1946.)

Expenses Incurred in Earning Non-Taxable Incomes: Such expense is not an allowable deduction in computing net income from other sources taxable under the law.

Exemption May Be Pro Rated Between Husband and Wife: Specific exemption may be claimed in return of either husband or wife, the other claiming no exemption; or may be pro rated between the two. (T. D. 2137.)

Exemptions, Miscellaneous Income: When rental payments in excess of three thousand dollars (\$3,000.00) per year payable to fiduciary, who fails or refuses to file Form 1063, beneficiaries, are not entitled to file exemption certificates directly. If fiduciary certificate is not filed,

the lessee should withhold 1 (one) per cent on entire amount. Lessee not presumed to have knowledge of beneficiaries unless parties to lease.

Property, Expenses Of: Landlord may claim deductions on account of any expense incurred in the maintenance of the property, and a reasonable allowance for depreciation, but no claim for depreciation should be made on account of any expense incurred for making good exhaustion for which a deduction is claimed elsewhere in the return.

Depreciation as an allowable deduction is distinct from loss and should not be confused with same. Depreciation, as considered in income tax law, does not relate to any shrinkage in the value of bonds, stocks, and like securities, due to fluctuation in their market value, and not deductible as depreciation and loss.

Losses must be sustained on personal or real property, not a speculative or a fluctuating valuation of continuing investment, but an actual loss sustained upon a completed transaction. (T. D. 2005.)

Book values which reflect the shrinkage in value of assets are not bases for determining taxable income. (T. D. 2090.)

Depreciation Deductible by Citizens or Residents: Depreciation of farm buildings other than dwelling occupied by owner actually sustained within the year in excess of repairs made will be considered allowable deduction. (T. D. 2090.)

Oil, Gas Wells and Mines, Depletion of: In addition to the deduction to measure the loss due to depletion, corporations will be allowed the usual depreciation of its machinery and equipment, etc.; such depreciation shall be determined on basis on the cost and estimated life of property with respect to which depreciation is claimed. (Art. 143, Reg. 33.)

Corporations leasing oil or gas territory shall base their depletion deductions upon cost of lease, and not upon estimated value, in place, of oil or gas. (Art. 144, Reg. 33.)

Corporations operating mines (including oil or gas wells) upon a royalty basis only cannot claim depreciation because of exhaustion of deposits. (Art. 145, Reg. 33.)

Depletion, Recording on Books for Purpose of Deduction: In the opinion of this office journal entry, showing the charge to depletion for income tax purposes only, will not be sufficient.

Corporations should make a general ledger entry of the depletion charged off, and the amount so charged should be reflected in the annual balances and in the report to the stockholders. (From letter signed Commissioner W. H. Osborn, and dated May 18, 1916.)

Depreciation Allowance and Treatment of Expense for Repairs, Improvements on Buildings Built on Leaseholds by Lessee or Acquired as Part of Purchased Leasehold: The capital of a corporation invested in buildings erected upon a plot of ground which it holds under lease may be returned to the corporation through annual deductions based upon the cost of such building and its estimated life or the life of the lease, whichever the case may be; that is, if the life of the lease is less than the life of the building, and such building, with improvements, will automatically be taken up by the owner of the land in fee simple at the expiration of the lease, then this office is of the opinion that the cost of the building should be divided by the number of years represented in the life of the lease and that equal deduction made from gross income in each year for the purpose of returning to the corporation the original cost of the building. On the other hand, if the life of the lease is longer than the estimated life of the building, then the annual deduction made by the corporation should be based on the cost of the building and its estimated life in years, and the number of years constituting the life of the lease need not enter into such calculations. In any event, the corporation is not entitled to two deductions for the

same purpose, and therefore, setting up of a fund to make good the capital invested is not allowed.

The cost of incidental repairs, etc., which do not add to the life of the buildings by improvements, etc.; may be charged against the annual income of each year, but in the event that improvements are made in the property then the cost of such improvements should be divided by the remaining life of the lease after the improvement has been made and an annual deduction made from the gross income on this basis.

In no event can the corporation be allowed to deduct the depreciation, as such, upon physical property in which it has no title. (Deputy Commissioner L. F. Speer, February 27th, 1917.)

Dividends, Life Insurance Policies: Dividends paid on life insurance policies that have not matured, whether drawn in cash or applied to the reduction of annual premiums due, are not considered items of taxable income, and should be excluded from returns.

Dividends from Paid-Up Policies are considered income and must be included in the annual return. They are considered same as dividends from corporations subject to a like tax. (T. D. 2137.)

Dividends, when record owner is not actual owner, and actual owner is a resident of the United States: A certificate need not be filed by the record owner of stock when the actual owner is a citizen or resident of the United States. Record owner of stock is not required to include in his personal return of such stock.

Salaries and Professional Fees: An amount of salary which was earned during a month prior to December 31st, 1915, and was not received until some date subsequent to December 31st, need not be returned as income for that year. It should be returned for the year in which it is received.

Dividends in the Hands of Fiduciary, and belonging to beneficiary, are not subject to normal tax, but are subject to the additional tax, whenever the beneficiary's income from all taxable sources is in excess of twenty thousand (\$20,000.00) dollars. (T. D. 2090.) Under act of 1916.)

Dividends on Corporate Stock, Etc.: Form 1041 prior to the passage of the Act of September 8th, 1916, on such form entries on first page, in column O, headed "BENEFICIARIES," should not include their respective shares of income derived from stocks or earnings of corporations, stock companies, etc., subject to like tax where the income has been deducted and withheld at source. (T. D. 2231.)

Dividends in hands of fiduciary belong to beneficiary, subject to additional tax, when such income is in excess of \$20,000. (T. D. 2090.)

Dividends Declared From Accumulated Profits During Life of Decedent and Subsequent to March 1st, 1913, Are Taxable in Year Received: Trustees are required to make returns and pay taxes for persons for whom they act. Where they act for and make distribution within taxable period they are required to make return and withhold normal tax. Where they act for undetermined individuals or for an individual not entitled to receive income within taxable period, they are held to be the agents of such beneficiaries, and as such fiduciary and agent required to make return and pay tax upon the amount received. Accumulation in the hands of a trustee equivalent to distribution in sum of accumulation.

Dividends Paid by Foreign Corporations deriving their entire income from business within the United States, and subject to tax under income tax law, shall be treated in the same manner as dividends from domestic corporations. (T. D. 2090.)

Dividends of Other Corporations: The income received by corporations on account of dividends will be subject to tax in hands of company paying the same, being a part of its earnings and also in hands

of company receiving same. The Income Tax Law specifically sets out there shall be returned as gross income all income received from all sources during the year for which return is made, and specifically enumerates items which may be deducted from such gross income. There is no provision whereby dividends received from other corporations may be deducted. (T. D. 2137.)

Dividends Received From Subsidiaries: Every corporation no matter how closely related to any other corporation, is required to make return of annual net income, and to pay income tax upon same.

Parent, holding, or other corporations must include in their gross income, and cannot deduct therefrom any dividends or share of earnings which they may receive from a subsidiary corporation. The fact that parent company owns all stock of subsidiary company is immaterial, and will not warrant such company in omitting said dividends from gross income. (T. D. 2090.)

In case wherein a holding company takes up each month on its books proportionate share of earnings of underlying companies such holding company will be required to include in its gross income the amounts taken up regardless of the fact that the same may not have been paid to it in cash. The fact the underlying companies credit to holding company amount of earnings to which it is entitled on basis of the stock it holds, together with facts that holding company takes upon its books the amount thus credited renders it incumbent upon holding company to return these amounts as income, regardless of the fact that underlying companies needed these earnings and used them in furtherance of their business.

Expenditures for extensions and improvements being chargeable to account of subsidiary companies are not deductible from gross income and therefore will not have the effect to reduce the earning to their respective shares to which the stock holders are entitled. (T. D. 2137.)

Stock Dividends: Stock dividends paid from earnings or undivided profit of corporation, etc., held to be equivalent of cash, and to constitute taxable income under same conditions as cash dividends. (T. D. 2274.)

Cash Value of Stock Dividends. Calculation of: Stock dividends should be accounted for at valuation placed upon stock by the corporation when said stock dividends were issued. (T. D. 2090.)

Stockholdings, Compensation Based on: Amounts paid as compensation to officers or employees, based upon stockholdings of such officers or employees, held to be dividends, although paid in lieu of salaries or wages, and are not allowable deductions from gross income for reason that dividends are not deductible. (Art. 119, Reg. 33.)

Certificate Form 1087 to Disclose Actual Ownership and Claim Exemption From Withholding at Source of Domestic Dividend Payments: When a non-resident alien or record owner of stock of domestic or resident corporation is an organization subject to withholding at source of dividend payment, as provided by Section 13(F) by Act of September 8th, 1913, but is not actual owner of the stock, such record owner may adapt income tax certificate Form 1087 to disclose actual ownership and to claim exemption from withholding by striking out the words, "to be filed with representative in the United States of such foreign principal," in the caption and the words, "in the United States," in the body of the form, and executing the certificate as the representative of the actual owner as provided in the space for the signature.

Dividends Paid in Liberty Loan Bonds Are Taxable Income to Stockholders Receiving Them to the Same Extent That Other Dividends Are Taxable: Under the Income Tax Act of September 8th, 1913, Liberty Loan Bonds purchased from the earnings or profits of a corporation that have accrued since March 1st, 1913, will constitute income to the stockholders to the amount of the earnings or profits invested by the corpora-

tion in the bonds. If the bonds were purchased from earnings or profits accrued prior to March 1, 1913, they would not represent taxable income; and if surplus from which they were purchased accrued in part before and in part after March 1st, 1913, they would represent taxable income, under the provision of law applicable to dividends, to the amount of surplus accrued since that date.

The income derived by an individual from the interest paid on Liberty Loan Bonds does not constitute taxable income, whether the bonds have been received as a dividend, or otherwise,

Dividends Declared From Depreciation and Depletion Reserves: The Federal Income Tax Law of September 8th, 1916, authorizes corporations, joint-stock companies, etc., when making annual income tax returns to deduct from gross income a reasonable allowance for the exhaustion, wear and tear of the property, arising out of the future employment in the business or trade, and in the case of oil and gas wells and mines, a reasonable allowance for depletion of natural products.

When such deductions are made and their amounts are carried to a reserve account and later a dividend declared and paid to that account, the amount of the dividend is held to represent a return of capital invested, and is not subject to income tax in the hands of the shareholders. (Deputy Commissioner L. F. Speer, July 14th, 1917.)

Exemptions in Case of Corporations, Exempt Organizations, Partnerships and Fiduciaries: Certificate No. 1065 is provided for such fiduciaries for the purpose of establishing their identity of non-liability to withholding at source. (T. D. 1998.)

Certificate Form 1063 Not Required on Payment to Non-Fiduciary: When payment other than interest on corporate bonds is made and payor has knowledge that payee is a firm corporation or fiduciary, he need not require an exemption certificate.

United States, State or Political Subdivision Obligations Exempt: Income derived from interest upon obligation of a State, County, or any Political Subdivision thereof and upon obligations of the United States or its possessions not subject to income tax, and ownership certificates in connection with coupons. (Art. 37, Reg. 33.)

Exemption May Be Pro-rated Between Husband and Wife: Specific exemptions from aggregate income of husband and wife may be claimed by either, or may be pro-rated between them in any proportion which may be agreed upon. In such case certificate Form 1000-B, showing exemption claims, and pro-rated agreement should be accepted by debtor corporation.

Exemption, Method of Claiming by Joint Owners of Bonds: If securities are owned jointly by several persons, certificates of ownership covering income derived therefrom, Form 1000 and 1000-B may be signed by joint owners, with names, addresses, and proportion of ownership of each on back thereof.

When certificate of ownership claiming exemption is filed, persons signing same may claim exemption thereon only in his own right; such other joint owners as desire to claim exemption against their share of income should file with signer thereof certificates on Form 1007, and should be attached to joint certificates when presented with coupons. (Deputy Commissioner J. E. Fletcher.)

Resident Foreign Corporations, Exempt Associations, Non-Resident Foreign Exempt Associations: Foreign organizations engaged in business within the United States are subject to the normal tax upon amount of net income accruing from business transacted and capital invested within the United States; but said organizations are exempt from any part of income withheld by a debtor or withholding agent, and such claim should be made on Form 1001, for interest and corporate securities, and on Form 1063 for miscellaneous income. (Art. 46, Reg. 33.)

Exemption, Method of Claiming by Citizen or Resident on Interest:

In event such coupon, checks, or bills of exchange above mentioned are presented for collection by individual claiming benefit of exemption, such individual shall be permitted to avail himself of exemption claimed, upon signing Form 1000*B, and no tax shall be deducted for amount of exemption so claimed. (Art. 60 Reg. 33.)

Corporations; Donations to Fairs: A corporation engaged in agricultural business cannot be allowed to make deduction from gross income on account of donations to Fairs, Churches, and associations, such donations being made for obtaining and preserving good will of Farmers who raise crops for it, since amounts so expended are clearly in the nature of gratuities and are not necessary expense of operation and maintenance, there is no such consideration in this case as is contemplated in T. D. 2090. (Acting Commissioner D. E. Fletcher, May 25th, 1915.)

License not Required of Collecting Agents for Substitution of Certificates: Until further ruling by this department, collecting agents may substitute their certificates of ownership under foregoing plan, and will not be required to secure license from Treasury Department, provided regulations are strictly complied with. (T. D. 1903.)

Said provision extended to responsible banks and bankers and collection agents in foreign countries through whom collection of such interest coupons is made. (Art. 40, Reg. 33.)

Endorsement Required on Substituted Certificates: The certificate of the owner for which certificate of collecting agent is substituted, must be given following endorsements by collecting agents:

Owner's certificate No.

..... (Name of collecting agency)

..... 191..

(Give date of certificate)

The counterpart of the within certificate bearing like number is attached to the coupons within mentioned for the delivery to the debtor or withholding agent, by whom coupons are payable. (T. D. 1903.)

Endorsement on Check When Certificates of Exemption are Filed with Debtor in Case of Registered Interest: Where such certificates are so filed, debtor shall stamp or write on interest order or check, "Exemption claimed by certificate filed with debtor." (T. D. 1974.)

Life Insurance: The amount paid under life insurance, endowment, or annuity contract is not income when returned to person making the contract, either upon maturity or surrender of contracts; but the amount by which such sum exceeds the amount paid is considered income. (T. D. 2090, as amended by T. D. 2152.) (Art. 5, Reg. 33.)

Dividends from Paid-Up Life Insurance policies must be included in the annual return of income. Considered the same as dividends from corporations subject to a like tax. (T. D. 2137.)

Insurance Policies Paid pursuant to contract are held not to be taxable in the hands of the beneficiaries, hence, in the payment of such proceeds, whether the same be in lump sum or installments, at the death of the insured on a matured policy, or as annuities, no withholding of the tax is required.

Payment of deferred dividends in so far as they represent portions of actual premiums received, are proceeds of insurance policy within the meaning of the law.

So much of annuities paid to annuitant as represents payment made by him upon such contract, need not be included in the income of annuitant. An increment on price of annuity is taxable income, and if in excess of three thousand (\$3,000.00) dollars, and no exemptions claimed, tax must be withheld.

Coupons of the Gold Policy Bond come under the class of obligations of an insurance company defined in the law as not subject to the tax, and, as such, certificates of ownership will not be required when payments of the coupons of these policies are made.

Fiduciaries, Returns Prior to Settlements of Estates: Under T. D. 2231, an estate cannot be without a beneficiary for income tax purposes.

Income Undistributed From Trust Estates: The income of trust estates is subject to income tax, as any other income. When such income received annually by beneficiary of an estate, the fiduciary will withhold normal tax due. Any part of annual income of such estate not distributed becomes an entity, and such is liable to both normal and additional tax. When beneficiary is incapacitated, and income is retained by fiduciary, income will be taxable as for an individual, and fiduciary will pay both normal and additional tax. When gross net income undistributed in hands of fiduciary is less than twenty thousand (\$20,000.00) dollars, estate will be listed as a beneficiary and only the normal tax will be assessable and paid by the fiduciary. When gross net income not distributed exceed twenty thousand dollars (\$20,000.00), it is subject both to normal and additional tax, and should be paid by fiduciary. (T. D. 2231.)

Return of Income Accruing to Trust Estates: Fiduciaries shall on or before March 1st, of each year render return on Form 1041 of income in their custody or control, when annual income is in excess of three thousand (\$3,000.00) dollars, and also when undistributed income of estate shall exceed twenty thousand (\$20,000.00) dollars. In such case estate shall be reported beneficiary for undistributed income. (T. D. 2231.)

Exchange of Coupon Interest for Funding Bonds: Exchange of interest for funding bonds is payment of interest on bonds and tax should be imposed and paid upon such interest for year in which it matures and payment is made, in the absence of claim for exemption the tax should be deducted and withheld on amount represented by coupons. (T. D. 2090.)

Quarters, Expenses of Government Officers and Employees: Commutation of quarters and the money equivalent of quarters furnished in kind shall be returned as income. When quarters are furnished in a less number of rooms than allowed by law, only the money equivalent to the number of rooms assigned shall be returned as income. When quarters are furnished in a greater number of rooms than allowed by law, it is to be assumed that the excess rooms are assigned for the convenience of the Government, and the money equivalent only to the number of rooms allowed by law shall be returned as income. Amounts received by, or paid for, an officer for heat and light shall be returned as income.

Mileage: The difference between the amount received and the amount of actual necessary expenses incurred on a journey shall be returned as income. Mileage is not gain or profit or income to the officer as he is required to pay his actual expenses while traveling under mileage orders. (T. D. 2079.)

The actual expenses to be deducted by the individual before ascertaining his profit on account of mileage are the expenses for which reimbursement would have been made by the Government if he traveled on an actual expense basis.

Amounts paid by the Government in the nature of reimbursement for subsistence and other items of actual expenses incurred while on business for the Government need not be returned as income.

The difference between amount received as per day allowance and amount of actual necessary expenses incurred shall be returned as income. (T. D. 2079.)

Farm Machinery is not an allowable reduction, as an item of expense, the cost of ordinary tools may be included under such item.

Under the sixth deduction enumerated in paragraph (b), providing a reasonable allowance for the exhaustion, wear and tear of property arising from its use or employment, there may be claimed a reasonable allowance for depreciation on farm buildings, other than dwellings occupied by owner, farm machinery, and other physical property, including stock purchased for breeding purposes; but no claim for depreciation on stock raised for resale will be allowed.

Expenses: Of operation and maintenance shall include all expenditures for material, labor, fuel, and other items entering into the cost of goods sold or inventoried at end of year, and all other expenses incurred in operation of business except such as are required by act to be segregated in return. (Art. 114, Reg. 33.)

Extension Because of Absence in Foreign Country: By reason of absence in foreign countries it is impossible for many individuals to receive notice and demand on Form 17 and make payment of taxes assessed so same can be received by collector within ten day period following June 15th, or within the ten-day period following the service of notice. Collectors are requested therefore to enter on Form 17, as the date on which such tax becomes due and payable, as near as a date ten days subsequent to the time that said notice should be received in ordinary course of mails by the taxpayer, and where it appears the full amount of tax assessed is placed in the mails within the ten-day period upon receipt of such notice, or in case notice is not delivered in due time by reason of the delay in mail and satisfactory evidence of this fact furnished, penalty and interest will not be collected. In latter case envelope enclosing notice should be forwarded to the collector and by him transmitted to Treasury Department with Form 325 as evidence of delay in delivery of notice.

This ruling applies solely to the collection of income tax from individuals and includes Government officers. (T. D. 2028.)

Fiduciaries, Are Subject to the Payment of Additional Tax Upon Incomes Received for the Benefit of Their Principals: A beneficiary is liable for the amount of normal tax derived by him through a fiduciary less the amount of exemptions claimed, and the amount of income on which normal tax has been withheld at source, is also liable for the additional tax upon the net income received by him in excess of the normal tax, the amount derived by him from an estate and all other taxable sources is required to be shown on his personal annual return. (T. D. 2090.)

Committee for Incompetent Considered Fiduciary: Under the Income Tax Law, such persons regarded as a fiduciary, and may use Form No. 1015, revised, when claiming exemption from withholding at source; No. 1019, revised, when not claiming exemption from withholding at source.

When income from other sources than interest on bonds of domestic corporations is to be collected in excess of three thousand dollars, such a fiduciary may secure withholding exemption at source by filing Form 1063.

Fiduciaries, No Withholding Against Upon Notice: By filing notice with withholding agents, said fiduciary shall be exempt from having any income withheld by any withholding agent, and such withholding agents will in such case not be held liable for normal tax, upon such incomes. (T. D. 2231.)

Exemption Claim on Interest on Corporate Securities: Form 1015 should be filed with debtor or withholding agent by fiduciary. (T. D. 2231.)

Fiduciaries, Procedure When Waive Exemption Claim on Interest on Corporate Securities: In such case notices should be made thereof

on Form 1019, but Form 1019 cannot be used when income affected is payable by fiduciary to beneficiary who would be exempt from income tax if such were payable to him directly. (T. D. 2231.)

When fiduciary uses above form, debtor organization should withhold normal tax, and fiduciaries receiving the same should not be required again to deduct tax on such income. (T. D. 1911.)

Fiduciary May Make Return for Beneficiary: As each fiduciary acts in behalf of the beneficiary of trust, return is required in such cases only on income accruing and payable to such beneficiary, and not the income of beneficiary derived from other sources. If, however, fiduciary is legally authorized to act for such beneficiary as agent or attorney in fact, he may in such case also make personal return for said beneficiary.

Tax Liability of Income Received from Sources Within the United States by Foreign Governments or Their Resident Agent: Under provision Section 9-g of the act of September 8th, 1916, which declares the intents and purpose of the Federal Income Tax Law, it was held that total net income received during each calendar year by foreign governments from sources within the United States arising from interest on bonds, notes, or other interest-bearing obligations of residents, corporate or otherwise, and including the income derived from dividends on the capital stock, or from net earnings of resident corporations, etc., whose net income is subject to a like tax, is subject to a tax of 2 per centum (Section 10), effective as of January 1st, 1916.

Returns shall be made and the tax shall be paid under liabilities named in the law by actual owners of the income or the proper representatives in the United States having its receipt, custody, control or disposal.

Treasury Regulations based on withholding provisions of Act of September 8th, 1916 (Section 13 e and f) will be held effective in case of foreign governments or their representatives as of January 1st, 1917.

Income Tax Form 1012 Adapted for Use by Debtor Corporation When Reporting Income Taxes Held from Payments to Non-Resident Alien Corporations: Duty of withholding income tax from dividends under Section 13 of act of September 8th, 1916, rests upon domestic or other resident corporation paying the dividends. When it shall appear that actual owner of stock is non-resident alien corporation, etc., debtor or issuing corporation in United States shall withhold one per cent (1%) from September 9th to December 31st, 1916, inclusive, and two per cent (2%) thereafter, as income tax from amount of dividend it pays to non-resident alien corporation, etc., and shall make return of such withholding.

Until such returns are printed and distributed, debtor will use Form 1012, and stamp across printed declaration at top, "Monthly return of income tax withheld from dividends paid to non-resident alien corporations, etc."

Name and address of withholding agent of debtor corporation will be inserted in blanks provided for that purpose, and there is no exemption which may be claimed by a non-resident alien corporation in receipt of income from domestic corporate obligations, the column "amount of exemption claimed" and column "amount of income on which withholding agent is liable for tax" will be disregarded. The amount of dividends in each case will be entered in the column "amount of income," and the amount withheld will be entered in the last column.

Such return will be accepted by this office as compliance with the requirement for monthly return, pending printing and distribution of forms specially provided for that purpose. (T. D. 2388.)

Form 1044, Revision of, for Monthly List Return: Collectors are advised that original Form 1044 for monthly return of amount of non-

mal tax withheld by collecting agency has been revised in the following particulars, so that tax withheld from interest on bonds of different classes can be reported thereon.

In section of reading matter beginning "To be made in duplicate," in fourth line thereof, change "coupon" to "coupons" and strike out "and interest orders."

In last line next above tabular list, strike out blank lines and words thereunder, "describe the particular issue of bonds," and "state "name" and "address"; "name of debtor corporation"; "name of particular list and substitute therefor in separate columns, "Party presenting coupons," and immediately thereunder, in separate columns, "name" and "address"; "name of debtor corporation"; name of particular issue of bonds"; "amount of income subject to tax," and "amount of tax withheld."

Immediately after and underline of totals of tabular list there shall be a doubled rule line. Strike out words now appearing below total line of tabular list on Form 1044, viz., "amount of tax remitted herewith (if any) to collector," and strike out dotted line following these words, and also "\$" mark on same line; and strike out the double ruled line appearing immediately thereunder. (T. D. 1973.)

Property Acquired by Gift: The value of property acquired by gift is not subject to income tax, but all gains or profits derived therefrom are subject to tax, and if property so acquired is subsequently sold at a greater price than the value at the time property was acquired, the gain in value is held to be income, and subject to tax, under Federal Income Tax Law. (T. D. 2090.)

Good Will: No depreciation can be claimed as an allowable deduction in a return incident to the money value of the good will of a business.

Holding Companies Doing Business Under the Old Excise Tax Law: In *Butterick Company vs. United States*, March 5, 1917; in action to recover excise taxes paid under protest it was held that a holding company which did nothing more than to receive and distribute income derived from dividends paid by subsidiary operating companies cannot be regarded as engaged in business in a way which would subject either of them to an excise tax.

Husband and Wife, Tax Computed on Separate Incomes: The regulations of the department require the incomes of husband and wife to be combined and authorizing the aggregate exemption of two thousand dollars (\$2,000.00) are applicable for normal tax only. The additional tax will be computed on the amount of each individual's income in excess of the minimum amounts upon which the additional tax at the graduated rate is to be calculated.

Separate incomes of husband and wife should not be combined for the purpose of additional tax. (T. D. 2137.)

Husband and Wife: Constitutionality of the act of October 3, 1913, was attacked because of discriminating features of the specific exemption provision. The United States Supreme Court upheld the constitutionality of the act.

Husband and wife living together entitled to an exemption of \$4,000 from the aggregate net income of both which may be deducted in making return of such income for taxation. (Art. 10, Reg. 33.)

If husband and wife are living together, having separate estates, the income from both may be made on one return, but income of each and full name and address of both must be shown in such return.

The husband as head of and legal representative of the household should render a return of actual income of himself and wife and it is assumed he can ascertain said income.

If wife has separate estate managed by herself having an income of three thousand dollars or over, she may make her own return, and if husband has other net income making the aggregate of both incomes

more than \$4,000, wife's return should be attached to return of husband or his income should be included in her return in order that a deduction of \$4,000 may be made from the aggregate income of both. Tax in such case being imposed only on so much of the aggregate incomes of both as shall exceed \$4,000.

If either husband or wife has separately an income equal to or in excess of \$3,000, a return is required under the law, and such return must include the income of both, and return must be made even though combined income be less than \$4,000.

If aggregate net income of both exceeds \$4,000, return must be made in the manner stated, although neither one have income of \$3,000 per annum. They are jointly and separately liable for such return and payment of the taxes.

Single or married status of the person claiming the specific exemption shall be determined as of the time of such claim, if claim be made within the year for which return is made, otherwise the status at the close of year. (Art. 10, Reg. 33.)

Unless wife has separate estate which requires her to file a separate return of income or to join with her husband, a husband having a taxable income of his own should include in his return the income accruing to the wife from special magazine articles. If neither has income of \$3,000 or more, but together have an aggregate income exceeding \$4,000, a return of joint income is required to be filed by either the husband or wife, and income above mentioned should be included in such return. The actual proceeds coming into wife's possession during the tax year and not the amounts estimated upon the acceptance of publication prior to payment should be included in return for such taxable year. (T. D. 2135.)

Husband and Wife, Death Of: Where either dies during the year having income of \$3,000 or more, return should be made by the executor or administrator of the deceased as of the date of his death, and the executor or administrator may claim an exemption of \$4,000. The survivor when making a return at the end of the year will be allowed exemption for single or married status existing at the close of the year. (T. D. 2090.)

Individuals Presenting Coupons for Collection Without Certificates Must Establish Their Identity: A corporation or collection agency or any person first receiving from the owner coupon for collection of registered interest should require persons tendering such coupons to establish their identity. (Article 52, Reg. 33.)

Permanent Improvements Made Under Rental or Leased Contracts: Where, under terms of a rental or leased contract, a tenant agrees to erect a building or to expend during the rental period a certain fixed sum in making improvements upon the freehold of another, it is held for income tax purposes that the building or permanent improvement becomes a part of the realty unless otherwise agreed between the contracting parties; and as such shall be accounted for, without having normal tax withheld, as gain or profit to the lessor in the value of his realty at the termination of the contract, whether terminated by expiration of the lease or otherwise.

The gain or profit to the lessor at the termination of the lease by expiration or otherwise is held to be the difference between the cost of the building or improvements and a reasonable allowance for the exhaustion, wear and tear of the property arising out of its use or employment in a business or trade during the period of its life under the lease; and no annual deduction for depreciation shall be allowed during the lease term.

As the use of the building or permanent improvement by tenant during the term of the lease is a part of the consideration of the contract, the cost may be pro-rated by the tenant over the lease term and deducted at an annual rate as a part of "the necessary expenses actually paid in

carrying on any business or trade," together with the cost of incidental repairs and maintenance. (T. D. 2442.) February 6th, 1917.

Commissions from Renewal Premiums Considered Income: Commissions on renewal premiums for insurance are income for the period in which received.

Where returns of annual net incomes were not made by individuals in receipt of such commissions because of insufficient income to require return of income, and such showing that insufficient income is caused by the exclusion of renewal premiums, such individuals should make and file returns of income and include therein the commissions received by them on renewal premiums. (T. D. 2011.)

Rent Is Returnable as Income in the Year Received: Amount of rent received from real property should be included in any personal annual return of net income. The landlord may be required to render in the year in which received, and deductions may be claimed on account of any expense incurred in the maintenance of said property or its use for rental purposes, including amount paid for repairs, insurance, fuel, light, etc., if any, and in addition, an amount representing a reasonable allowance for wear and tear of the property arising from its use, but no claim for depreciation should be made on account of any amount of expense in restoring property or making good exhaustion which deduction is claimed elsewhere in the return.

The landlord should include in his return of annual net income the rents actually paid to him during the year, and make returns as of the year in which paid.

Promissory Note Received in Payment Equivalent to Cash Settlement: The receipt of a promissory note in settlement of an account, and so much of the amount of which such note represents net income, is subject to tax in the year received.

Income Accruing to Minor Through Natural Guardian: A taxpayer is required to account only for the actual amount received from the fiduciary.

Proceeds of Sale of Rights to Subscribed Stock: The income tax law levies a tax upon income from all sources, and it is held that an individual who holds stock in a corporation by reason of the sale of his rights to new stock in corporation, is an item to be assessed, and should be included in return.

Income Tax: For the purpose of deductions, amounts paid to collector and amount withheld at the source on account of the income tax, are held to be paid within the meaning of the law in year in which assessment was made and tax paid to collector. (T. D. 2135.)

Taxes Paid by Banks on Stock Held by Individuals: do not constitute allowable deductions from gross income of the bank, but are allowable deductions in return of individual. (T. D. 2135.)

In the case where A owns a number of shares of stock, of a bank at the time taxes are assessed against the stockholders of the bank, and subsequently he sells stock to B prior to the payment of the tax by the bank in his behalf, B, holding this stock at the time the bank actually pays the tax for stockholders, the taxes which were assessed against the stock while in A's hands and became due and payable prior to the sale to B, constitute items which may be claimed as deductions by A. Taxes due and payable after the date even though assessed against the stock while in A's hands, constitute items allowable as deductions to B.

Income Accrued: It is held income accrues to the individual partner from partnership at time his distributive is determined and reduced to possession. There should be included in the return of individuals accruing to them from business of partnerships for their business years such a sum as ascertained by means of book balance, whether distributed or not. (T. D. 2090.)

Income of Partnership Not to Be Withheld at Source: The provision of law relating to the deduction and payment of tax at the source of income do not apply to the income of partnerships. Taxable members of partnerships only are required to account for profits accruing from partnership. (T. D. 1957.)

Materials, Pro-Rating Charges for Material Used and on Hand: In ascertaining expenses proper to be included in deductions to be made under items of "expenses," corporation carrying materials and supplies on hand to use, should include in expenses charges for materials only to amount that the same are actually disbursed, and used during year for which return is made. (Art. 123, Reg. 33.)

Aggregate of Taxable Income, Including Dividends, Payable to a Beneficiary, in Excess of \$3,000, Returns Should Be Made: Under Act of September 8th, 1916, a fiduciary is required to file a return when the amount payable to any one beneficiary, including dividends, is \$3,000 or over, and is required to withhold the normal tax when the amount payable to any one beneficiary, exclusive of dividends and income on which tax has been withheld at source, exceeds \$3,000. (Commission W. H. Osborn, January 4th, 1917.)

Excess Amounts Received at Maturity of Series of Shares in a Building Association on Surrender of Life Insurance Policy Constitute Taxable Income: The difference between the total amount received for the surrender of a matured certificate in a building and loan association and the aggregate of deposits made by the certificate holder to bring that certificate to maturity is the amount to be returned as gain or profit when computing income tax liability for the year for which certificate is surrendered.

The difference between the amount received by an insurance policyholder upon the maturity or surrender of the policy and the aggregate amount of premiums paid during the life of the policy constitutes taxable income, it should be included in any personal return the individual may be required to render for the year during which the proceeds of the policy are received. (From letter signed by Deputy Commissioner L. F. Speer, dated February 8th, 1917.)

Income of Persons Dying After March 1st, 1913, and Prior to October 3rd, 1913, Liable to Tax: The income of a person dying on July 22nd, 1913, is liable to tax. The tax is against citizens and residents of the United States personally. (Brady v. Anderson, Collector of Internal Revenue, May 21st, 1917.) (T. D. 2494.)

Payments of Income Made in Liberty Loan Bonds: The Attorney-General holds, in part, that: "The Act of April 24th, 1917, provides to the bonds thereby authorized that the principal and interest thereof shall be exempt, both as to principal and interest from all taxation, except the State or Inheritance taxes, imposed by authority of the United States or its possessions, or by any State or local taxing authority."

Like every exemption from taxation, this provision must be literally construed and cannot be extended beyond its precise terms. It protects an owner of these bonds from any tax of whatever character, except the State or Inheritance taxes; but, a tax levied upon one's net income or annual gain cannot be evaded because the income or gain happens to be liquidated by the delivery of a certain number of these bonds or other non-taxable securities. Such a tax is upon the income itself as an entirety, and not upon the specific articles to which this income is finally transmitted. When these bonds, therefore, are used as a medium of payment, whether in the discharge of a private or a corporate dividend, the profit or gain to the recipient is nevertheless subject to income tax. (Deputy Commissioner L. F. Speer, June 22nd, 1917.)

Returns of Undistributed Income: Fiduciaries having control of income accruing to known beneficiaries other than trust estates as provided in T. D. 2231, but not distributed to beneficiaries during the year,

shall render return Form 1031, giving name and address of each beneficiary having a distributed interest in said income. In all such cases, fiduciaries shall withhold and pay collector tax upon distributive interest of each beneficiary when in excess of three thousand dollars, the same as if the income was distributed. When normal tax on undivided income has been so withheld, it shall, not again be subject to tax when actually distributed, but beneficiary should account for same in his return in the year in which actually received, entering in Column (a) the amount of income on which normal tax has heretofore been paid. (T. D. 2289.)

Income, Undistributed, entered on Form 1041 by Fiduciaries: Listing on page (1) of the return should be made by entering the name of the beneficiary twice. Opposite one such entry should be placed amount actually paid, and opposite the other, amount retained.

Returns in Cases of More Than One Trust or Estate: A fiduciary acting for a beneficiary in more than one estate or trust required to account for each separately and if amount of income from no one of the estates exceeds three thousand dollars, no withholding is required. (T. D. 2090.)

In such case a single return on Form 1041, revised, for all trusts in his hands should be made. Where trustee holds different trusts created by different persons, but for the same beneficiaries, he should make returns for each separately on Form 1041, revised. This ruling is based upon identity of creator and not beneficiary. (T. D. 2137.)

Income Defined: Miscellaneous income includes income derived from salaries, wages, rents, royalties, interest, taxable annuities, emoluments or other fixed or determinable gains, profits and income of another person, such as payment of interest upon obligations of individuals. (T. D. 2135.)

Gross Income of Insurance Companies: Consists of total revenue derived from operation of business, including income, gains, or profits from all other sources, as shown by entries on books of accounts within calendar or fiscal year for which return is made, except as modified by express exemptions of articles which apply to Mutual Fire, Mutual Marine and Life Insurance Companies. (Art. 97, Reg. 33.)

Sinking Fund Increment Is Taxable Income: In cases where corporations set aside and place in a sinking fund under control of Trustees their own bonds or bonds of other corporations which they may own, it is held that such fund and that any increment to that fund as a result of investments made by trustees having same in charge is income to corporation and should be included in its return as part of annual net income.

If trustees have invested the amount of the sinking fund reserve, or any portion of it, in the bonds of the corporation and such corporation pays to the trustees the interest on these bonds, such corporation will be permitted to deduct such interest from its gross income, provided the amount of interest thus paid plus interest on any other outstanding indebtedness which it may have, does not exceed limit fixed by the law and provides further that interest paid to trustees, together with all other earnings on investment of sinking fund, made by the trustees, is included in income of the corporation (T. D. 2181.)

Royalties Received From Lessees are Income: Von Baumbach, Collector of Internal Revenue, Petitioner, vs. Sargent Land Company; same vs. Sutton Land Company, 219 Fed. 31, January 15th, 1917; same vs. Kearsarge Land Company.

These three cases were argued and submitted together and involved practically the same facts. These suits were brought by the corporations, named in the United States District Courts for the District of Minnesota against the Collector of Internal Revenue to recover certain taxes, paid under protest, assessed under the Corporation Tax Law of 1909 for the years 1909, 1910 and 1911.

The appellants were corporations who owned lands which they leased to others for the purpose of mining the natural deposits therein for the consideration of a certain sum of money for each ton to be removed from said land.

The companies were assessed upon their gross income, being the entire receipts of the companies from royalty on the leases collected for the years 1909, 1910, 1911, and some sums received for the sale of lots, land and stumpage, from which expenses and taxes were deducted, but no deduction was made upon account of the depletion of the ore in the properties, or on account of such sales. The appellants contended that moneys received by them during those years in payment for iron ore, under the contracts covering their mineral lands, represented the conversion of the investment of the corporation from ore into money, and that if such moneys were gross income they are entitled to make deduction therefrom on account of depletion of their capital investment.

The court held that the payments made by the lessees to the corporation were in substance the proceeds of an outright sale of a mining property, but in view of the terms of the instrument, were, in fact, rents or royalties to be paid upon entering into the premises, discovering, developing and removing the mineral resources thereof, and such come within the term income as intended to be reached and taxed under the terms of the Corporation Tax Act.

The statute permits deduction of "all losses sustained within the year, including a reasonable allowance for depreciation of property."

What was here meant by "depreciation of property?"

We think Congress used the expression in its ordinary and usual sense as understood by business men. We do not think Congress intended to cover the necessary depreciation of the mine by exhaustion of the ores and determining the income to be assessed under the statute by including such exhaustion within the allowance made for depreciation. It would be a strange use of the term "Depreciation" to say that, where ore is taken from a mine in the operation of the property, depreciation, as generally understood in business circles, follows. True, the value of the mine is lessened from partial exhaustion of the property, and owing to its peculiar character, cannot be replaced. But in no accurate sense can such exhaustion of the body of the ore be deemed depreciation. It is equally true there seems to be a hardship in taxes, such receipts as income, without some deduction arising from the fact that the mined property is being continually reduced by the removal of the minerals. But such consideration will not justify this court in attributing to depreciation the sense which we do not believe Congress intended to give to it in the act of 1909."

Taxability of Income Accruing to Decedent Dying After March 1, 1913, but Before October 3, 1913: Nicholas F. Brady et al. vs. Chas. W. Anderson (late Collector of Internal Revenue), U. S. Circuit Court of Appeals, February 8, 1917.

This is an action against the Collector of Internal Revenue by the executors of Anthony N. Brady, deceased, to recover taxes assessed by the commissioner and paid under protest upon income received by Brady during his lifetime before the income tax act of October 3, 1913, imposing a tax, had been passed.

Anthony N. Brady died July 22, 1913, and his executors, in accordance with the requirement of the Commissioner of Internal Revenue, made a return of the income received by him between March 1, when the act went into effect, and July 22, 1913, when he died. The commissioner assessed a tax of \$61,654.72.

The plaintiffs contend that the tax is against persons who are citizens or residents of the United States.

The Government contends that the tax is upon the property and not upon the person, which is the view taken by the trial judge.

The plaintiffs argue that Brady, having died July 22, was neither a citizen or resident of the United States October 3, 1913, at the time the act was passed. Its language does not authorize the collection of any tax upon income received by him. On the other hand, the Government says that as the tax is upon the property, it makes no difference whether Brady was living or dead at that time.

The court held that the tax is against citizens and residents of the United States personally. They are chargeable in respect to income received by him. The statement that the tax is upon this income does not create an obligation in rem. It is only a way of saying that the owner is taxable with reference to the income. Taxable persons are spoken of throughout the act.

The effect of making the act retroactive is to apply it to Brady exactly as if it had been enacted March 1, 1913, and as, by reason of his death, he cannot make a return, his executors, into his hands his estate has come, must do so.

Indebtedness, Compromise of: In a case where a company has been unable to pay any interest on its indebtedness for some years proposes to settle that indebtedness, part in new securities and part in cash, the creditors to reduce the face of the bonds by \$100,000.00 as an inducement for raising \$100,000.00 cash. And by this process the apparent financial condition of the debtor company is improved by \$100,000.00, not through any earnings, but by effecting settlement with its creditors by which \$200,000.00 of its bonds are cancelled at a cost to it of \$100,000.00 in cash, thus liabilities being reduced \$100,000.00, it is held that such gain in the reduction of its indebtedness is taxable. Such deduction in indebtedness constituting income may be prorated over period elapsing between the date of issue and payment of said bonds. (Commissioner W. H. Osborn, July the 10th, 1915.)

Indebtedness, Interest Accrued and Paid on: "Paid-up capital stock outstanding at the close of the year," when used in connection with "interest bearing indebtedness," to determine maximum principal upon which interest for purpose in authorized deduction is to be computed, meaning the par value of shares issued as reported in item 1 of return form, and will not include surplus carried by corporations. (T. D. 2090.)

Full amount of stock as represented by the par value of shares issued is to be regarded as the paid-up capital stock, except when such stock is assessable on account deferred payments, or payable in installment, in which case the amount actually paid on such shares will constitute the actual paid-up capital stock of the corporation. (Art. 95, Reg. 33.)

The interest to be deductible must have been computed on proper principal at contract rate when actually paid within the year.

Interest paid pursuant to contract on an indebtedness secured by mortgage on real estate occupied and used by a corporation, in which real estate the corporation has no equity or to which it is not taking title, is an allowable deduction from gross income as rentals charge, payment of which is required to be made as a condition to the continued use and possession of the property. If, however, the corporation has an equity in or is purchasing for its own use the real estate upon which the mortgage is a prior lien, the indebtedness will be held to be the indebtedness of the corporation within meaning of law, and the interest paid on such mortgage will be deductible only to that extent by it, with interest on other obligations of the corporation, within limits fixed by the act. (Art. 148, Reg. 33.)

It is held that in case of a corporation having capital stock, this deductible interest is interest actually accrued and paid within the year, on an amount of an indebtedness not exceeding the paid-up capital stock outstanding at the close of the year, increased by the addition thereto of one-half the interest bearing indebtedness outstanding at the close of the year.

If no indebtedness is outstanding at the close of the year, the maximum deduction allowable on account of interest paid will be amount of interest actually accrued and paid on amount of indebtedness not exceeding at any time within the year, the entire paid-up capital stock outstanding at the close of the taxable year, that is, in such case, the paid-up capital stock outstanding at the close of the year, measures highest amount of indebtedness upon which deductible interest can be computed. For the purpose of an allowable deduction, interest on the maximum amount of indebtedness, determined in the manner above indicated, can be computed upon such amount only for the time during which such amount of indebtedness is not in excess of paid-up capital stock increased by one-half the sum of interest bearing indebtedness outstanding at the close of the year.

In any event amount of interest, in order to constitute an allowable deduction, must not only be within the limit of the law as herein defined, but must have actually accrued and been paid within the year for which return is made. (T. D. 1960.)

Bonded and Other Indebtedness: Indebtedness to be included under item two of the return is all interest-bearing collateral, subject of sale in the ordinary business of the corporation. (T. D. 2137.)

Amount of interest-bearing indebtedness of a corporation outstanding at the close of the year, should be reported under item two of the return form 1031 whether the interest accrued upon such indebtedness was actually paid during the year or not. (T. D. 2137.)

Inheritance Taxes: It is held that collateral inheritance taxes levied under the laws as a charge against the corpus of the estate, does not constitute an allowable deduction, and in computing tax liability, to either the estate or the beneficiary thereof.

Initials, Use of Authorized: In writing the name at top of certificate, initials may be used. (T. D. 1920.)

Accident Insurance: Money paid to person insured by an accident policy, on account of accident sustained, is returnable as gross income by insured persons. The proceeds of accident insurance policies paid upon the death of the person insured to the beneficiary, is treated like the proceeds of life insurance policies. (T. D. 2135.)

Insurance, Life and Fire Premiums: Premiums paid on property leased constitutes allowable deduction in computing net income. Premiums paid on life insurance by the insured, do not constitute allowable deduction. (T. D. 2090.)

Life Insurance Carried by Partnership on Lives of Individual Members: Premiums paid on life insurance taken out by partnership on lives of individual members constitute allowable deductions in ascertaining net income of partnership. Upon death of insured partner amount received as life insurance should be included in gross income of partnership. (T. D. 2090.)

Mutual Fire Insurance Companies which require members to make premium deposits to provide for losses and expenses, shall not return as gross income any portion of premium deposits returned to their policy holders, but shall make return for income received from all sources plus such portion of premium deposits as are retained by Companies for purpose other than payment of losses and expenses and re-insurance reserves. (Art. 98, Reg. 33.)

All assessments received by Mutual Fire Insurance Companies and not returned to policy holders, but retained for other purposes than paying losses and expenses incurred during year for which return is made, are taxable income.

Therefore, if Mutual Fire Insurance Companies retain out of monies received on account of assessments an amount in excess of losses, expenses and re-insurance reserves of any particular year, that excess, plus amount received from any other source, will be considered net income upon which tax shall be assessed. (T. D. 2161.)

Mutual Marine Insurance Companies may include in their deductions from gross income amounts repaid to policy holders on account of premiums paid by them and interest paid upon such amounts between ascertainment thereof and payment thereof, such amounts and interests having been included in gross income. (Art. 99, Reg. 33.)

Life Insurance Companies authorized to omit from gross income such portion of any premium received from any individual policy holder as shall be paid back or credited to policy holder or treated as an abatement of his premium. Insofar as "deferred dividends" payable at a stated period "a portion of any actual premiums received," such deferred dividends may be included in amount to be omitted from gross income for year in which actually paid back, or credited to policy holder, or applied as an abatement of premium. In case of dividend credited or apportioned annually to policy holder, only aggregate amount so actually credited, and not any accretions thereto, can be excluded from gross income. In case of whole-life or five-year distribution policies, deferred dividends may be excluded from gross income to the extent they are paid back, or credited to insured. (Art. 100, Reg. 33.)

Gross Income of Insurance Companies will include net premium income as reported to State Insurance Department, except that foregoing items specifically exempted, in act, and in case of Life Insurance Companies surrender values applied in any manner, consideration for supplementary contracts involving and not involving life contingencies, and all other income as shown by books of accounts. (Art. 101, Reg. 33.)

Applied surrendered values and consideration for supplementary contracts not involving contingencies included in income will be deducted as payment under policy contracts, but for convenience in verifying returns, these items should appear in both gross income and deduction. (Art. 102, Reg. 33.)

Proceeds of Life Insurance in Favor of Corporations: Where corporations pay premiums on insurance policies insuring, in favor of corporation, the lives of officers or others, such premiums may be allowably deducted from gross incomes of corporations paying same.

In all such cases, proceeds of policies when paid at maturity or upon death of insured shall be returned by corporation as income for year in which proceeds were received. (T. D. 2090.)

Insurance Companies: Assessments. In the case of assessment, insurance companies, the actual deposited sums with State or territorial officers pursuant to law as additions to guarantee or reserve fund shall be treated as payment required by law to reserve fund. (Art. 147, Reg. 33.)

Insurance Companies: Supplementary Statement by: All insurance companies should include and attach to their returns a supplementary statement showing, for Life Companies, the aggregate items "of such portion of any actual premiums received from any individual policyholder as shall have been paid back or credited to such individual policyholder within such year"; in case of Mutual Fire Insurance Companies a statement showing "any portion of the premium deposits returned to their policyholders"; and in the case of Mutual Marine Companies, "amounts paid to policyholders" on account of premiums previously paid by them, and interest paid upon such amounts between the ascertainment thereof and payment thereof, which are, or may be, omitted from gross income. (Art 103, Reg. 33.)

Premiums Paid to Insurance Companies on Policies Maturing in Favor of Corporations, Lives of Officers or Employees, and Not Hereafter Deductible From Gross Income but to the Extent That Such Premium Payments Have Not Been Previously Deducted From Gross Income in Any Return of Annual Net Income May Be Deducted From the Proceeds of the Policy When Such Proceeds Are Received, the Net Proceeds Being Returned as Income: T. D. 2090 in so far as it author-

izes corporations to deduct from gross income the annual premiums paid on policies insuring the lives of officers or employees in favor of such corporation is hereby modified to the extent that instead of the corporation carrying such insurance, being permitted to deduct from gross income of the year in which paid, the amount of the annual premium payments, they will hereafter be permitted to deduct from the gross proceeds when received of any policies of which the corporations are the beneficiaries, the entire amount of the premiums paid during the term of the policies, less any premium payments, which under the former ruling, have been deducted from gross income in any return of annual net income, and, the net proceeds of the policies, thus ascertained, shall be returned as taxable income of the year in which received. (T. D. 2519.)

Interest Payments on Commercial Paper of Corporations: Are subject to withholding at source only when payment to any one individual within taxable year exceeds \$3,000. On all other obligations of corporations payments are subject to withholding regardless of amount of payment. (T. D. 2090.)

Notes for Interest: Where note is given in payment of interest, payor should withhold normal tax on entire amount of note, if in excess of \$3,000. If exemptions of the difference are claimed, tax should be withheld only on amount of said note in excess of such claim.

If any person has purchased or discounted any such notes, omitted in acquiring them from previous holders, to make deductions of tax, he can look only to person from whom notes were obtained, as the (debtor) is required to deduct and pay to the Collector of Internal Revenues the amount of the normal tax which may be due thereon. (Art. 68, Reg. 33.)

Coupon Interest, Accruing Prior to Incidents of Tax: Where coupons bear date prior to March 1st, 1913, but not presented for payment until 1915, although funds have been on fund to meet same since maturity, no withholding required for reason that such coupons represent income due and payable and could have been reduced to possession on demand, prior to incidents of tax law.

Where coupons payable in 1911 and have been in default since that year, funds to meet same having been deposited with withholding agent since January 1st, 1915, held that income represented by such coupons accrue to owners of bonds prior to incidents of tax, and does not constitute taxable income.

Interest on Bonds of Exempt Organizations: Interest on such bonds should be accounted for by owner if said owner is taxable person or corporation. (Commissioner of Internal Revenue.)

Interest on Bonds Bearing Tax Free Covenants: Under the provisions of this act, corporations must return as income the full amount of interest received on bonds, although such bonds may contain a tax free covenant; that is, a covenant in which debtor corporation agrees to pay any tax assessed on bonds or income therefrom. And since there is no specific provision in law excluding or deducting the gross income interest upon bonds of this character, receiving corporation cannot omit or deduct such interest from its gross income, and same will necessarily be reflected in net income upon which tax is computed. (T. D. 2167.)

Interest received by a corporation on bonds by terms of which debtor corporation is required to pay any tax which may be assessed thereon must be returned by corporation receiving the same as part of its gross income, notwithstanding the fact that debtor corporation may have withheld and paid tax on such interest, receiving corporation is not permitted to deduct from its gross income the amount of interest upon which this tax may have been paid. (T. D. 2137.)

Interest on bonded indebtedness, or other indebtedness bearing different rates of interest, may be deducted from gross income during the year, provided the aggregate amount of such indebtedness on which interest is paid does not exceed the limit prescribed by law, and in case the indebtedness is in excess of amount on which interest may be legally deducted an indebtedness bearing highest rate may be first considered in computing the interest deduction and the balance, if any, will be computed upon the indebtedness bearing the next lowest rate actually paid, and so on, until interest on the maximum principal allowed has been computed. (Art. 151, Reg. 33.)

Interest on Government, Etc., Bonds Credited to Partnership Is Deductible Even Though Bonds Are Deposits as Collateral for Loan, the Interest Paid on Which Is Deductible as Partnership Expense: Members of partnerships dealing in municipal bonds may exclude from the net distributive interests their proportionate shares received by partnership from interest on municipal bonds notwithstanding bonds are deposited as collateral for loan upon which interest paid is deducted as expense of partnership business, there being no connection for income tax purposes between interest paid as business expense and interest received from municipal bond, but for purpose of exclusion, municipal interest must be actually received or credited to partnership. (From letter signed by Acting Commissioner David A. Gates, January 25th, 1917.)

Judgment Paid for Infringement of Trade Name and Amount Paid in Satisfaction of Suit for Interest on the Judgment: A corporation was sued for infringing a trade name covering a period ending in 1912. Judgment was obtained 1916. The Treasury Department holds that the amount of this judgment should be pro-rated over the period ending in 1912 according to the income of each year. Such part of it as by this method is found applicable to the income of the corporation from the period of 1909 to 1912, would be referable to those years, but no part of this sum would be deductible in return of income for 1916.

The same corporation also paid in 1916 an additional sum as consideration for dismissal on a pending suit for interest on the above judgment from the date of decision of the Circuit Court of Appeals to the date of payments, and for the unrestrained use of the trade name in question. It is held that if this amount "can be segregated between interest and use, it would be treated the same as another case would, for the period subsequent to 1912, and such part thereof as shall be thus found applicable to the 1916 income would be deductible in the return of income for that year. Under the respective heads of "business expense and interest," and if segregation has not been or cannot be made, the amount may be treated as "business expense" "to be pro-rated as above indicated." (Commissioner W. H. Osborn, February 9th, 1917.)

Interest Received and Paid by Brokers in Connection With Purchase and Carrying of Securities for Customers: A corporation which did a brokerage business and bought securities for its customers who paid only a part of the purchase price, paying interest on balances, the corporation also paying for the securities purchased only part of the purchase price and owing balances on which it paid interest, including in return of gross income the difference between the interest received and the interest paid, made incorrect return. The interest received by plaintiff from its customers should be included in gross income.

Interest paid by plaintiff on said purchases is allowable as interest payable on its bonded or other indebtedness. In determining net income, interest can be deducted only to an amount not exceeding the paid up capital stock outstanding at the close of the year. (Altheimer & Rawlings Investment Co. v. Allen, T. D. 2441, Feb. 15, 1917.)

Interest on Bank Deposits in United States to Credit of Non-Alien Individuals or Corporations Having No Place of Business or Office in This Country Is Returnable Income, But the Tax Is Not to Be Deducted

at the Source and No Return Need Be Made by the Bank to Depositor on Account of the Interest: Interest paid on such deposits is subject to tax under the provisions of the Income Tax Law, December 8th, 1916, whether received by non-resident alien, or foreign corporation having no office or place of business in the United States, and must be included in the recipient's income tax return rendered for the year, during which received or credited to an account against which the recipient may draw. Banks, bankers, trust companies, or other banking institutions receiving deposits of money are not required to withhold at the source the normal income tax on interest paid, or accrued, on the amount deposited; nor is a banking institution required under the terms of the act of December 8th, 1916, to make any return covering amount of interest paid to any depositor. (Commissioner David A. Gates, June 29th, 1917.)

Interest Accrued on Bonds at Time of Sale or Purchase: The owner of bonds at the time the interest becomes due and payable, should only account in his return for interest which accrued after the bonds were purchased by him. The former owner should account in his return for interest which accrued during his ownership of bonds.

Bonds Purchased With Accrued Interest: The act of October 3rd, 1913, provided various methods of relief in the case of a taxpayer who has had the normal tax on one per cent withheld at the source to an amount in excess of his total tax liability.

A claim for the amount of accrued interest paid to the previous holder, as an allowable deduction, the law does not provide for such a contingency; and the item does not appear to fall within the designation "interest paid within the year by taxable person upon indebtedness."

A return in the form outlined on Form 1040, (revised) will result in showing correctly the income in which the tax is to be assessed by this office, or the amount withheld at the source in excess of the individual's liability.

Coupon Interest Accruing Prior to Incidence of Tax: Where coupons bear a date prior to March 1st, 1913, but have not been presented for payment until 1915, although funds have been on hand to meet them since maturity, withholding not required, for the reason that income was due and payable, and could have been reduced to possession prior to Incidence of Income Tax Law.

Materials and Merchandise, Inventory of: In order that certain classes of corporations may arrive at their correct income, it is necessary that inventory of the merchandise at the close of each year shall be made in order to determine the gross income or the expense of operation.

Physical inventory is preferred, but where this is impossible, an equivalent inventory, equally accurate, will be acceptable. An equivalent inventory is an inventory of merchandise on hand taken from books of corporation. (Art. 161, Reg. 33.)

Tax Liability on Foreign Investments Computed on Rates of Exchange at Time It Was Credited: It is proper for the individual to return each item of income at the rate of exchange on the date it was credited to his account.

Joint Owners of Rented Property do not desire to claim exemption allowed by paragraph (c) of Income Tax Law and merely wish to file statements with lessees that will show proportionate interests of joint owners in order that normal tax may be properly deducted, if amounts are such as render deduction necessary from income accruing to individuals, desired information may be imparted to withholding agent by use of office certificate 1000, revised.

Under these circumstances any statement of joint ownership that will be made to the lessees will be acceptable to this office. (T. D. 2137.

Landlord and Tenant: Landlord in receipt of annual rental from a tenant in excess of \$3,000 may at time of rental payments file with tenant a claim of exemption under paragraph (c) of Income Tax Law. (Form 1007, revised.)

He may also after December 1st, of the taxable year, file with tenant or with the Collector of Internal Revenue, a claim for deduction under paragraph (b) on Form 1008, revised. (T. D. 2090.)

Record of Leases: In making examination of records of leases, all leases of property from which rental is less than \$2,000 should be ignored. In case lease shows a rental in excess of \$3,000, and if records fail to show that neither filed the withholding return, steps should be taken to secure proper return. (Letter No. 8 to Internal Revenue Agents.)

Lessee, Liability of, Under Terms of Lease to Pay Tax on Rentals Received by Lessor: Little Schuylkill Nav. R. R. & Coal Co. vs. P. & R. Ry. Co. (Common Pleas Court, Philadelphia County, Pa., 44 Pa. County Court Reports 197.)

The court holds in this case that where a railroad lease provides that the lessee shall pay all taxes, charges and assessments imposed under any existing or future law on the demised premises or on any part thereof, or on the business there carried on, or on receipts, gross or net derived, therefrom, or upon the capital stock of the lessor, or of the dividends thereon, or upon the franchises of the said company for the payment or collection of any of which said taxes the lessor may otherwise become liable, the lessee will not be required to pay the federal income tax on the rental received by the lessor.

Legacies: Legacies in all cases, unless clearly inconsistent with the intention of the testator, is held to be vested rather than contingent. Where there is a vested interest, whether distributed or not, it is subject to tax; and when in the hands of fiduciaries, they are required to account for, and pay a tax thereon. (T. D. 2090.)

Application of Income and Excess Profit Taxes to Liberty Bonds Issued or To Be Issued Under the Act of September 24, 1917: Under the income tax law, as amended by the war revenue act, interest paid within the year on indebtedness incurred for the purchase of liberty bonds (4's) may be deducted in computing net income subject to income surtaxes and excess profit taxes. In case of corporations this is, of course, subject to the limitations imposed by the income tax law on the amount of indebtedness, interest on which may be deducted.

Investments in obligations of the United States, including liberty bonds of both issues made by a corporation or partnership from capital, surplus or undivided profits will be included in invested capital for the purpose of computing the deduction and rate of taxation under the excess profit tax law; but undivided profits earned during the taxable year cannot be included in invested capital. (T. D. 2541, October 23, 1917.)

License Required Before Undertaking Collection of Foreign Items: All persons, firms or corporations undertaking the collection of coupons, checks, bills of exchange, etc., in payment of interest upon bonds issued in foreign countries or upon similar obligations, or upon obligations of foreign corporations engaged in business in foreign countries are required by law to obtain a license from Commissioner of Internal Revenue. (Art. 54, Reg. 33.)

Provision for collection of tax on foreign obligations includes interest upon all foreign bonds, even though coupons may be payable in the United States. (Art. 61, Reg. 33.)

License Application For Collection of Foreign Items: Application for such license form (1017) will be made to the collector for the district in which such business is to be carried on. Upon acceptance of applica-

tion, collector will issue to applicant without cost a license (Form 1010) which will continue in force until revoked or canceled.

Blank forms of such license bearing facsimile signature of Commissioner of Internal Revenue, will be furnished collectors on requisition, who will, in all cases countersign same before issuing to applicants. (Art. 55 Reg. 33.)

Application for these licenses and stubs of licenses issued shall be retained and preserved in offices of collectors of Internal Revenue. (T. D. 1909.)

Licenses to Keep Record of All Transactions: All persons licensed shall keep the records in such manner as to show from whom every item has been received, and such records shall be open to inspection at all times, to internal revenue officers. (Art. 62 Reg. 33.)

License For Branch Office to Be Issued By Collector of District Where Branch is Located: The names and addresses of branch offices shall be furnished to collector, in application of said principal, and if requirements have been complied with to satisfaction of collector, he shall certify this fact to Collector of Internal Revenue for district in which branch office is located, and collector to whom this certification is made shall issue to such branch office a license as in case provided in Art. 55. (Art. 57, Reg. 33.)

Licensee For Collection of Foreign Items in Deducting Tax: The licensed person, firm or corporation first receiving such foreign items for collections shall withhold therefrom normal tax, and will be held responsible therefor unless exemption is claimed. (T. D. 2090.)

If foreign item is in form of check or bill of exchange, the words "income tax withheld by....." (Giving name, address, and date) shall be endorsed or stamped thereon by such licensee; (Or words "Income tax exemption claimed through....."—giving name and address of licensee), as the case may be. (T. D. 2090), but if item is represented by coupon from bonds, the licensee shall attach thereto a statement identifying same and the endorsement a stamp showing tax withheld shall be placed on statement instead of coupon or coupons.

Said endorsement or stamp shall be sufficient evidence of withholding of tax to relieve subsequent holder or purchaser from withholding. (Art. 58 Reg. 33—as amended by T. D. 2023.)

Licensee, Procedure by When True Owner Is Unknown to Nominal Stockholder: Ownership certificates to cover shares belonging to known shareholders should be obtained. In lieu of certificates to cover shares where shareholders are unknown, certificate Form 1002 should be executed to cover each individual's share, and deduct the normal tax therefrom. If at later date, a certificate covering any such item claiming exemption is received, it should be forwarded with your next return to collector.

Collector, upon receipt of such certificate, providing it is received, not later than thirty (30) days prior to May 1st, of next succeeding year, will make proper notation on such monthly and annual lists as rendered by collecting agent, and acknowledge receipt of certificate, and after receipt of such acknowledgment, amount of tax withheld upon item covered by certificate may be released and paid to individual entitled to same. (Deputy Commissioner L. F. Speer, April 4th, 1914.)

Return Monthly by Licensee: Licensee for collection of foreign items, and disposition of certificates, shall obtain names and addresses from whom items are received and shall prepare same in duplicate on Form 1043, and file with collector for his district not later than twenty days of month next proceeding in which items were paid. List shall be dated and contain names and addresses of taxable persons, character and amount of income, amount of exemption claimed, amount on which withholding agent is liable for tax, and amount withheld. (Art. 59 Reg. 33.)

Monthly List Returns Need Not Be Sworn to: The requirement that monthly list returns be made under oath and filed by withholding agent on or before the 20th day of the month following that in which withholding occurs is waived.

In all cases list return required of withholding agents (of which monthly returns would form a part as required by regulation) will be made, sworn to and filed as now required by existing regulations, and jurat for annual list return will cover entire return as thus made up. (T. D. 1997.)

Annual List Return must be filed on or before the first day of March of each calendar year for which annual return is made. (Art. 53, Reg. 33.)

Annual List Return by Licensee for Foreign Collections: In addition to monthly lists, licensee will before the first day of March in each year file with collector a duplicate of return (on Form 1043-A) showing amount of income paid and tax withheld by him during preceding year. (Art. 59 Reg. 33.)

In all cases, annual return will be sworn to and filed by withholding agent. (T. D. 1997.)

Expenses of Lobbying: Sums of money expended for lobbying purposes and contributions made for campaign expenses held not to be ordinary necessary expense in operation of the business of a corporation and not deductible in computing net income. (T. D. 2137.)

Taxes Assessed Against Local Benefits: Taxes paid pursuant to assessment levied by special districts, such as irrigation, reclamation, drainage, etc.; for sidewalks in cities, street extension, grading, paving, etc., held to be "taxes assessed against local benefits." Such taxes are not allowable deductions. (T. D. 2090.)

Losses Sustained by Partnerships: The losses sustained in trade by partnership, if determined for the purpose of claiming net distributive losses as allowable deductions in individual returns of partnership members, respectively. Losses of partnership should be ascertained by method prescribed for ascertaining net distributive profits set forth in T. D. 2090.

Property Acquired Prior to March 1st, 1913: The fair market price or value as of March 1st, is held to be the fair market price or value as of the entire day of March 1st which in the case of variation between "opening and closing prices" for the day would mean the average price for the day. In case of exchange in would be conditioned upon showing that the exchange quotation represented the fair market price or value of the stock.

Mining Individuals and Corporations May Compute Depletion Deductions From Gross Income on the Basis of the Fair Market Value of the Mine Contents as of March 1st, 1913, if Property Was Acquired Prior to That Date or on Basis of Cost if Acquired Subsequent to That Day: Ownership of the mine contents at the time for which the computation is made, is an essential prerequisite to an allowable deduction.

Minors, and Persons Unable to Make Returns: A fiduciary acting for a minor or insane person, having a net income in excess of three thousand (\$3,000.00) dollars, should make return for his ward on Form 1045. In the event he has more than one ward, he will be required to make return on Form 1041, revised, and a separate return on Form 1040 for each ward having net income of three thousand dollars (\$3,000.00) or more for the year. (T. D. 2090.)

In case of fiduciary acting for minors or other incompetents, held to be agents of such persons, and must pay all income tax on such income in their hands as if acting for themselves. (T. D. 2231.)

Married Woman Should Use Christian Name: A married woman in executing such certificate, should sign her own Christian name and not that of her husband.

Equipment Trust Notes: Are subject to withholding. Temporary receipts stand in place of notes and where interest period intervenes and retired within interest period and prior to expiration of full term of bonds, ownership certificates are required, and should cover that part of interest period between beginning of such period and date of retirement. (T. D. 2090.)

Return Not Filed, Notice Is Sent to Delinquent by Collector: Where returns are not filed within prescribed time either by individuals or corporations, notice of Form 1045 is in each case sent to the delinquents. (Art. 196, Reg. 83.)

Notice of Failure to Make Return: Where required, returns are not filed within prescribed time by withholding agent, notice on Form 1045 should be sent to delinquent. (Art. 196, Reg. 33.)

Tax Withheld as Source Not to Be Forwarded to Collectors Until Notice of Assessment Has Been Received: Attention is directed to Note (a) appearing on bottom of Form 1012, 1021-C, 1043, and original 1044, providing that "withholding agents may, if they so desire, pay at time this list is filed to Collector of Internal Revenue with whom same is filed the amount of tax withheld during month of which the list is made."

In order that persons whose tax is deducted and withheld at source may have opportunity to file its source which is required to withhold and pay tax for them, certificates claiming benefit of deductions and exemptions, withholding agent will not pay to Collector of Internal Revenue tax withheld until after time for filing claim for deductions and exemptions has expired. (T. D. 1965.)

In monthly returns as now prescribed, a space is provided to show amount of taxes which withholding agent may remit to collector when returns are filed. Withholding agent will not, however, forward to collector amount withheld by him until notices of assessment are received from collector. (Art. 33, Reg. 33.)

Ownership Certificates, When Not Attached: When coupons are not accompanied by certificates of ownership, parties receiving said securities for collection or otherwise, shall deduct and withhold tax, and shall attach to such coupons its own certificate (revised) Form 1002, giving the name and address of the owner or the person presenting such coupons with a description of the coupon; also setting forth that they are withholding the tax upon them. (Article 52, Regulation 23.)

Partnerships, Profits of Limited: The profits of limited partnerships making returns in the same manner as corporations will be treated the same as dividends of corporations; i. e., the dividends received from such limited partnerships will not be subject to the normal tax in the hands of the members of the limited partnership receiving the same. (T. D. 2137.)

Partnerships, Members Liable in Their Individual Capacity: Ordinary co-partnerships are not subject to tax imposed by this act, but individual members of any such partnership are liable for the income tax in their individual capacity on their respective shares of the earnings of said partnership, whether distributed or not. (Art. 94, Reg. 33.)

Employee of a Partnership Under Participation of Profit Agreement: Constitute an item of business expense to the partnership and may be deducted in computing income of partnership.

Partnership Profits Earned Prior to March 1st, 1913, for Fiscal Year Ending Subsequent Thereto: (Decision) Hyman Cohen v. John Z. Lowe, Jr., Collector, 234 Federal 474. Plaintiff in this case charged that taxes were assessed upon basis of profits received by him as a member of the firm of Cohen, Goldman & Co. for year ending November 15th, 1913, which was the fiscal year of the firm, a part of that year antedating taking effect of the law. Whether profits earned by firm prior to March 1st, 1913, though not credited or paid to individual

partners till the end of fiscal year in November, 1913, are taxable to the individual members need not be decided in this case. Plaintiff suing to recover a tax claimed to be excessive has burden of proof in showing its illegality and must show profits were earned by partnerships prior to March 1st, 1913, and in what sum.

Plaintiff contends equitable method would be to proportion profits for fiscal year of firm in equal monthly instalments, and allot to the period preceding March 1st, 1913, its proper proportion, and that this method of apportioning has been adopted by the Treasury Department in like cases. There is no such specific regulation by the Treasury Department governing this matter. In absence of regulation, however equitable, the method in analogous cases can only be adopted by this court in this case by stipulation of parties. It may be that no profits accrued to the partnership after March 1st, 1913, and none were taxed accordingly except such as were properly subject to tax. In absence of a showing to the contrary, the court must assume the tax was legally collected, the burden being upon the plaintiff to establish illegality.

Profits of Partnership Taxable to Members Thereof: Partner's pro rata share of profits derived from partnership, whether divided or not, shall be included in the personal return of each partner. (Art. 11, Reg. 33.)

Individual members of a partnership should include in their individual returns their respective interest in partnership profits ascertained for the business year ending on any date in 1917. (T. D. 2137.)

Partners Should Return Their Respective Interests in Firm's Accounts Receivable: The distributive interests of partners in firm's net income as shown by books when closed should be reported in their return and not their distributive interests in so much of the net income as represent actual cash receipts.

Profits, Undivided Annual, of Partnerships returned by individual members and taxes paid thereon need not be again included in their annual return when profits are actually distributed. (Art. 14, Reg. 33.)

Returns May Be Required of Partnerships: Partnerships are not subject to income tax and are only required to make return when so requested by the Commissioner of Internal Revenue or by the Collector of the District in which such partnership is located; (Art. 12, Reg. 33.)

No return for partnership as such is required to be made for the year (1917) unless it shall hereafter specifically be requested. (T. D. 2137.)

Partnerships Must File Certificates Establishing Their Identity: Certificate Form No. 1063 is provided for firms, organizations and fiduciaries for the purpose of establishing their identity and non-liability to withholding of tax on income at source (other than interest on bonds.) (T. D. 1998.)

Partnerships, Foreign, Owning Stock of Domestic Corporations, but Not Record Owners Thereof: Such dividends on stock of domestic corporations or resident alien corporations are held to be prima facie income to the record owner of the stock, and such owner will be liable for income tax according to his or her status unless a disclosure of actual ownership is made to the Commissioner of Internal Revenue, which shall show who the owner is and his address, and, that record owner is not actual owner. (T. D. 2401.)

Profits Accruing to Non-Resident Alien Partnerships on Sale of Stock Negotiated Through Domestic Bankers: Where a foreign banking house buys through a domestic banking house shares of stock and sells the stock at a profit, this profit is taxable. But the domestic firm need not retain the normal tax.

Partnerships: Ordinary co-partnerships not subject to tax imposed by this act, but individual members of any partnership, are liable for income tax in their individual capacity on their respective shares of earnings of such partnership, whether distributed or not. (**Art. 94, Reg. 33.**)

Withholding From Partnership Salaries and Drawing Accounts: It is HELD that withholding is required under the terms of the law whenever the contract or articles of agreement between partnership members provides for stipulated salaries, as such, in payment of services rendered by the individual members. However, in cases where by agreement or otherwise, members of the firm are permitted to draw either stated or unstated sums in advance of an annual or other periodic determined partnership profits, no withholding is required, as these sums do not represent the "fixed or determinable annual gains, profits and income of another person as covered by Sec. 9 (b) of the Federal Income Tax of September 8, 1916."

Money due for professional services of lawyers, physicians, and the like, should be entered on the annual return for the year in which such payments were received.

Where service and payment period is divided by the end of the taxable year, compensation for the period so divided should be accounted for in the returns for the year in which such payment is received. Where the service is of such nature as to be compensated by fee that no portion becomes due until service is completed, then the total amount of the compensation should be included in the return for the year in which the compensation is received. (**T. D. 2090.**)

Certified Checks may be accepted in payment of all internal revenue taxes if drawn on National State Banks and Trust Companies, which will not require the payment by the Government for their exchange.

The law does not specifically authorize the acceptance of any form of exchange in payment of internal revenue taxes other than currency and such certified checks as are specifically described in Department Circular No. 11. If collector elects to accept other mediums of exchange not specifically authorized by law, he does so at his own risk if depository bank will accept such forms of exchange endorsed by collector and issue regular certificates of deposit therefor. The responsibility would appear to shift from collector to depository. (**T. D. 1990.**)

Payments: Certified Checks and Other Forms: This office cannot authorize any departure from the requirements of the law, which are that internal revenue taxes are payable in cash, certified checks drawn in favor of collectors on National or State Banks or Trust Companies located in cities where respective collectors deposit their collections, or such "out-of-town" certified checks as can be cashed without expense to the Government.

It has always been the attitude of this office that if collectors elect to accept personal checks, or any other form of exchange not specifically authorized by law, they do so at their own risk, and are responsible under their bond for any loss that may occur thereby (**T. D. 2158.**)

Tax: When It Must Be Paid by Corporation When Return Has Been Made by Commissioner of Internal Revenue: The assessment made on basis of such return shall be paid immediately on notice and demand given by collector. (**Art. 177, Reg. 33.**)

And the tax so discovered to be due, together with additional tax prescribed, shall be assessed, and amount thereof shall be paid immediately upon notice and demand. (**Art. 184, Reg. 33.**)

Under a similar provision of Corporation Tax Law the Commissioner of Internal Revenue is held to have authority to amend the return of a corporation as a "false" return if it is incorrect, although made in good faith even after tax assessed on original return has been paid. (*Elliott Nat. Bank vs. Gill*, 210 Fed. 933.)

Penalty for Delay in Payment of Taxes: To any sum or sums due and unpaid after the date for payment stated in the notice and demand issued by the collector, there shall be added the sum of 5 per cent on the amount so unpaid and interest at the rate of 1 per cent per month. (Art. 164, Reg. 33.)

Receipt for Taxes Paid: The only official receipt for taxes that collectors may sign under the law are stamps, where stamps are issued, or Form 1, when the tax is not payable by stamp, which receipts are to be issued to every taxpayer for taxes paid. However, the department has no objection to collectors signing commercial receipts or voucher checks, and (subject in the latter case to rules of depository), but they should in signing such receipts or vouchers, write or stamp across the face thereof the words "not an official receipt." The official receipt on Form 1 must, however, be furnished; and it is to be distinctly understood that an unofficial receipt is not in any way binding on the department, and will not be received by it as evidence of payment of the tax. (T. D. 2226.)

Computation of Income Tax on Payments Received on Contract to Sell Real Estate on the Installment Plan in Cases Where Title Is Not Transferred Until Final Payment Is Made: The case as presented, "where A buys 10 acres of land for \$1,200 per acre, and subdivides it into 60 lots. He spends \$3,000.00 in improvements, sewer, walks, etc., on the subdivision, making the cost of each lot to him \$250.00. These lots are then sold on a land contract, which while it vests possession of lots in the vendee, explicitly retains title to the same vendor and provides for a reversion to him in case of default on terms of the contract. Usually these lots are sold on contracts, the terms of which are ten per cent down, and, for lots under five hundred dollars, monthly payments of five dollars each until full amount is paid. Supposing that in the aforementioned example, A sold thirty lots in 1916 for \$450.00 each, and received ten per cent down, and, say, four monthly payments on each account, what income subject to taxation would be returnable therefrom?" This office holds that such a contract is for the ultimate sale and purchase of lot in question, that every dollar received under the contract represents, in part, a return of a portion of the cost of the lot to the vendor, and in part a portion of the total profit to be derived from its sale, and that the amount of profit represented by all payments received during the tax year should be taken into consideration when computing for Federal Income Tax purposes, the amount of gain or profit to be included in the vendor's personal income tax return. The vendor, of course, may claim as allowable deductions such amounts as are actually expended during the tax year for advertising, hire of salesmen, office expenses, taxes, etc. Under the terms of the contract, in case a default occurs in payment, the vendor retains all payments received as liquidating damages, and the vendee loses all right and title he may have to the property, or to the amount of payments made, the entire amount therefor paid and credited to principal should be included as income in year during which default occurs. (Commissioner L. F. Speer, March 14th, 1917.)

Penalty for Failure to Make Return or Falsifying Same; If person liable to make return for himself or others fails to make same, but consents to disclose his particular business or such facts as are necessary in the filing of a return, it shall be the duty of the collector to make such lists or return, which being distinctly read and consented to, signed and verified by oath by person liable to make such returns, and the same then may be received as return of such person.

In any case where a person is liable to make return shall neglect or refuse to make same or make wilfully false or fraudulent return, it shall be the duty of the collector after due notice has been given to make such lists according to the best information that he can obtain by examination of such person or other evidence. When duly certified by

the collector such list shall be return of said person, and the tax ascertained to be due upon such return together with penalty incurred shall be assessed and collected. (Art. 21, Reg. 33.) (T. D. 1950.)

Penalty, Individuals: In the case of neglect or refusal to make a return within the prescribed time (except in case of sickness or absence) there shall be added 50 per cent to the tax. (T. D. 1950.)

In the case of (intentional) neglect or refusal to make, or for a false or fraudulent return made, there should be 100 per cent added to the tax. (T. D. 1950.)

Penalty, For Failure to Make Return by Withholding Agents at Proper Time: Failure to make and file returns on Form 1013, 1041, 1042, 1043a and 1044a, before March 1st of each year renders a withholding agent liable to specific penalty of \$20.00 to \$1,000.00. (Letter 1265 to collectors.)

The 50 per cent addition to tax for failure to make return, and 100 per cent additional for intentional false or fraudulent return will not be assessed against delinquent withholding agents. (Letter 1265 to collectors.)

Penalty, Avoiding the 50 Per Cent and Specific, for Failure to File Return on Time by Subsequently Filing Within Notice From Collector Applying to the Act of September 8, 1916, Only: The section of the Act of September 8, 1916, which provides: "In case of any failure to file and make a return or list within the time prescribed by law, or by the collector, the Commissioner of Internal Revenue will add to the tax 50 per cent of its amount, except that when a return is voluntarily and without notice from the collector filed after such time, and it is shown that the failure to file it is due to reasonable cause and not a wilful neglect, no such addition shall be made to the tax." It is HELD that this provision applies only to the returns required to be filed for the year 1916 and subsequent years. (Letter 54 to collector.)

Claim for Abatement Stays 5 Per Cent Penalty Until Claim Is Rejected: "When an assessment is made for a tax or penalty and demand made for payment, if a claim for abatement (Form 47) is filed within ten days after such demand, and accepted by the collector, the time ceases to run against the claimant as to 5 per cent penalty until the claim is rejected. Upon receipt of notice of rejection of the claim, the collector should immediately notify the party assessed and demand the payment of the tax; if the tax is not then paid within ten days after mailing of the notice to the claimant by the collector, of the rejection of the claim, the 5 per cent penalty accrues. Interest at 1 per cent per month continues to run and should be collected with the tax at the time of payment for the full number of calendar months which intervened between the expiration of the first ten days' notice and the date of the payment of the tax, notwithstanding the fact that a claim for abatement has been filed." (Reg. 14, October 15, 1911.)

PENALTIES, Collection Suit to Enjoin: Kohlhamer vs. Smietanka, Collector, 239 Fed. 408, January 31, 1917.

While Section 3224, Revised Statutes, which prohibits suits to enjoin the collection of internal revenue taxes does not specifically include "penalties" as such, yet where penalties are authorized by statutes to be added to the tax and collected as part of the tax, the court will hold that the penalty is a part of the tax, the assessment and collection which are governed by Section 3224.

Foreign Pensions: License not required for collection of foreign pensions paid to resident aliens or citizens of the United States. (T. D. 2090.)

Pensions: Pensions paid by the United States Government are subject to income tax. (T. D. 2090.)

Permanent Improvements Made Under Contract in Addition to Rentals: Where tenant enters into contract where he agrees to pay a

yearly rental and in addition agrees to make improvements in a certain sum: such amount as equals the improvements and actually accrues to the benefit of the landlord is held to be income to the landlord at time of its expenditure and should be withheld by tenant for the taxable year in which benefits of such expenditures accrue to landlord. (T. D. 2135.)

Fiduciary Cannot Be Created by Power of Attorney: A person cannot, by power of attorney, delegate a duty to another which he cannot himself perform, and inasmuch as an individual cannot relieve withholding agent from requirements of Income Tax Law by filing Form 1015 (or Form 1063), the person holding power of attorney is without authority to file this certificate as a fiduciary. However, for income tax purposes he may file any certificate which his principal would be able to file. (T. D. 2090.)

Manufactured Products, Cost of: The cost of raw material, the cost of labor, men who actually work on such products, as well as cost of supervisory labor, may be included as an element of the cost of manufactured products, provided such expenditures are not separately deducted from gross income in return of annual net income.

The overhead charges referred to in Form 1031 should include the salaries of officers, clerk hire, and such other office expenses as do not have to do directly with the manufacture of the product. (T. D. 2152.)

Profit from Sale or Other Disposition of Capital Assets: Profit is the difference between the selling price and the cost where the selling price is more than the cost. (T. D. 2080.)

Profits from Sale of Real Estate: Gains and profits resulting from a real estate transaction are subject to income tax in so far as they represent actual net income for the year in which the transaction occurred. (T. D. 2137.)

Profits Realized by Individuals or Corporations from Sale of Real Estate will be taxable except where property in connection with which property is obtained was acquired prior to March 1st, 1913.

For income tax purposes, where there is an actual sale, profit will be considered as realized, although payment is to be made in installments, and presumably bear interest and are held to be worth in cash their face value. (T. D. 2090.)

Computing Profits When Various Parcels of Stock of the Same Issue Are Bought and Sold at Different Dates. Whenever possible the shares sold shall be identified by the number of the certificates covering them. When sold and its identity cannot be determined, it should be charged against the stock first purchased and remaining unsold. If the purchase occurred on or after March 1st, 1913, the entire amount of difference should be returned.

Appraised Value of Property at Time of Death of Owner, if Subsequent to March 1st, 1913, the Basis for Determining Gain or Loss on Subsequent Disposition: When individual dies after March 1st, 1913, leaving property, all gains or losses and subsequent sales shall be computed on basis of appraised value at date of death and executors should not make return of book gains or losses either up to the date of death or on transfer of property to legatee or trustee under will, or from one trustee to succeeding trustee, the appraised value at the date of death remaining as basis for all subsequent realization of losses or gains in cash. (From letter signed by Commissioner W. H. Osborn and dated February 3rd, 1917.)

Public Utilities; Corporation Excise Tax—Act of August 5th, 1909: Union Hollywood Water Co. v. John P. Carter, Collector. (238 Fed. 329.) (April 4th, 1917.)

The fact that plaintiff was a Public Utility Corporation which, under the laws of a state, was not the owner of the property, but merely entrusted with the use thereof, which it must devote to the public, does not

entitle it to more favorable treatment than other corporations, it being a corporation organized for profit, having a capital stock represented by shares, and the act making no exceptions in favor of Public Utilities.

Moneys received from consumers of water for service connections and pipe extensions are not permitted to be deducted from the gross amount of the income for they do not come within any of the permitted classes of deductions mentioned in the statute. Moneys so expended are invested in permanent improvements which tend to enhance the rental and the market value of the water system.

Real Estate; Losses from Sale of Other Disposition: Special assessments, if any, actually paid as local benefits in connection with real estate are held to be expenditures which add to the value of property and should be capitalized, whether such expenditures are made prior to or subsequent to incidence of tax; that is to say, such expenditures, no matter when paid, became, in effect, a part of the cost of the property.

All carrying charges of income which may have been received prior to sale of property may be included as part of the cost of such property, and cost thus determined will be excluded from gross proceeds of sale of such property, and excess of such cost returned as income.

If carrying charges are less than the income, such carrying charges, unless they be for improvements or betterments, will not be added and made part of the cost of the property, but will be from gross income received, in which case it will appear that return of corporation will show net income subject to tax. (From letter signed by Commissioner W. H. Osborn, dated December 22nd, 1914.)

Receipts, Personal by Collectors: After careful consideration, this office has reached the conclusion that to protect the interest of both the taxpayer and the government, some evidence should be given at the time of payment to taxpayers who pay taxes directly to deputy collectors, and such a receipt as follows is not in violation of Section 3188, which prohibits issuance of receipts in lieu of a stamp:

"Received of JOHN DOE \$....., to be forwarded to the Collector to cover special tax due as....."

In case payment is for stamp tax, or for amount other than special tax, the form may be modified accordingly. (T. D. 2341.)

Receivers: The receiver will be required to file a fiduciary return when interest payments are in excess of three thousand (\$3,000.00) dollars.

In such case tax should be withheld subject to authorized exemptions claimed. (From letter signed by Acting Commissioner David A. Gates, dated February 27th, 1915.)

As related to a corporation, receiver is not withholding agent, save as corporation or its fiscal agent would be under such circumstances. (From letter signed by Acting Commissioner David A. Gates, dated June 22nd, 1916.)

Receivers, Trustees in Bankruptcy, to Make Returns and Pay Tax for Corporations Whose Property or Business They Are Managing: The receiver of property of a railway company is liable for income tax on net income derived by him from operation of property, even though such income is used by receiver under orders of court, and payment of indebtedness incurred in part prior to and during the year in which income was earned.

Receiver is liable for tax on income arising and accruing during his incumbency, even though income is retained by him pending orders of court as to disposition. The fact that outstanding liability incurred in part prior to and in part during the year in which income was earned are greater or less than amount of income is immaterial. If earnings of year are in excess of expenses incurred, in creating income, so that net income arises or accrues, that income is taxable, and receiver is liable for tax imposed thereon.

Receiver is liable for income tax assessable upon income accruing during his incumbency even though under order of court such income is turned over to railroad company, outstanding liabilities of such company having been satisfied.

Receiver is liable for tax assessable upon income accruing during his incumbency, even though such income under orders of court, is used in payment of interest of bonds of such company, such interest having accrued during the year in which income was earned, and being in excess of amount which railway company under Income Tax Law, would be permitted to deduct from gross income and arriving at net income, were it in charge of property. A Receiver must apply the same rules both as to income and deduction, as corporation would apply same in making return. For the purpose of Income Tax receiver acts in capacity of officers of corporation. (Acting Commissioner David A. Gates, June 22nd, 1916.)

Receiver to an Individual to Make Return and Pay Tax: Under Section (2b) act of September 8th, 1916, "the income of any kind of property held in trust except when the income is returned for the purpose of the tax by the beneficiary" is subject to normal and additional tax, the tax to be assessed to the trustee. Under the provisions of Section (7a) the receiver will be permitted to deduct, as an exemption, three thousand dollars (\$3,000) in his return. This return is to be made on Income Tax Form 1040.

The receiver is indemnified by the act against the claim or demands of every beneficiary for all payments of taxes which he shall be required to make under the provisions of the Act of September 8th, 1916, and he shall have credit for the amount of such payments against the beneficiary or principal in any account which he makes as such receiver.

The income being thus freed of tax liability imposed by the statute, it may thereafter be dealt with by the receiver without further regard to the requirements of the tax statute. (Deputy Commissioner L. F. Speer, February 9th, 1917.)

Liability of a Receiver in Partition Proceedings: While a receiver is an indifferent person between the parties, appointed by the court to collect and receive the issues and profits from property under the provision of Section 9 (g) of income tax law, he is the owner, for income tax purposes, and will, therefore, include the total income received by him under this receivership in the one return to be made by him, (Page 205 Missing)

Record Owner of Stock, Duty of, When Other Than Actual Owner: It is customary for a large amount of stock to be left in the names of stock exchange houses, as, for instance, in the names of members of the New York Stock Exchange. The ownership of the stock will be transferred very many times before the certificate is transferred if the certificate stands in name of a stock exchange house. The stock exchange house, record owner of the stock has no means of ascertaining the true owner and no means of knowing whether or not the true owner is a non-resident alien corporation. In such a case the tax liability rests on the record owner of the stock and the record owner can secure release only by establishing actual ownership by means of the certificates provided for that purpose. The taxable status of actual owner will establish the record owner's duty in the premises. (Deputy Commissioner L. F. Speer, December 28th, 1916.)

Suit Against Collector to Recover Tax by a Corporation Incorporated to Provide and Operate a Railroad Terminal: Boston Terminal Co. v. Jas. D. Gill, Collector U. S. District Court for the District of Mass., December 26, 1916.

The plaintiff was incorporated to provide and operate a terminal for a certain stated railroad which was required to use a station to be built and to which the capital stock of the corporation was issued, said railroad paying for the use of the terminal, which payments were part of the operating expenses of the railroad, they being entitled to

dividends on the stock in the corporation. It was held that the plaintiff company was organized for profit within the meaning of the law. The plaintiff corporation to which payment was required to be made by the railroad using the terminal and which granted concessions and licenses to others than the said stock holding railroads for the transactions of the various kinds of business and which operated facilities for supplying power, heat, light, gas, etc., manufactured by it was engaged in business.

Interest on bonded or other indebtedness paid within the year is to be deducted from gross income, according to the second clause of Section 38, but only the interest paid upon such indebtedness to an amount not exceeding the corporation's paid up capital stock.

The taxes assessed upon returns amended by the Commissioner and collected from the plaintiff company were lawfully collected and judgment was rendered for the defendant.

Withholding Agents, Responsibility of, for Refundment When Form Is Filed: No penalty attaches to action of withholding agent in refunding amounts improperly claimed in Form 1008, when refundment is made in good faith.

Withholding agents should be aware of fact that assessment will be made by this office in the light of facts shown by certificate on Form 1008, revised, attached to their return; and reasonable care should be exercised in performing duties imposed by law.

When it appears on face of Form 1008, revised, and from facts in possession of withholding agent that claim is either erroneous or fraudulent, refundment should be denied. In such case claimant has proper redress by means of a claim for abatement provided by Article 33 (c), Reg. 33, of January 5th, 1914.

Same care should be exercised by collectors in authorizing refundment as would be expected of withholding agents. (T. D. 2135.)

Claims for Refund and Abatement of Taxes: The Commissioner of Internal Revenue, subject to the regulations prescribed by the Secretary of the Treasury, is authorized, on appeal to him made, to remit, refund, and pay back all taxes, erroneously or illegally assessed, all penalties collected without authority, and all taxes that appear to be unjustly assessed or excessive in amount, or in any manner wrongfully collected; also to repay to any collector or deputy collector the full amount of such sums of money as may be recovered against him in any court, for any internal taxes collected by him, with costs and expenses of suit; also all damages and costs recovered against any assessor, assistant assessor, collector, deputy collector, or inspector, in any suit brought against him by reason of anything done in due performance of his official duties; provided, where second assessment is made in case of a list, statement or return in the opinion of collector or deputy collector is false or fraudulent or contains any under-statement or under-valuation, such assessment shall not be remitted, nor shall taxes collected under such assessment be refunded or paid back, unless it is proved that said list, statement, or return was not false or fraudulent, and did not contain any under-statement or under-valuation. (Sec. 3220, Rev. St.)

Reimbursement of Expenses Incident to an Accident: Amounts received from a railroad company by way of reimbursement for expenses incident to an accident is not subject to an income tax. (T. D. 2135.)

Rent: Where tenant rents two pieces of property from same owner, payment should be combined and when aggregate income is in excess of \$3,000, normal tax should be withheld, subject to authorized exemptions claimed.

Where Board of Education for school district lets property at annual rental exceeding \$3,000, such board of education regarded as tenant and should withhold normal tax, subject to exemptions claimed.

A lessee paying rent in excess of \$3,000 under lease from two or

more individuals must make deductions from all payments in excess of \$3,000, unless certificates of exemption are filed. He should ascertain in what proportion rent is divided by use of Revised Form 1000B, which may be executed by one of the parties in interest, the others executing Form 1007. Withholding should be made from income of individuals and not aggregate amount paid. Situation is not altered if lessors are husband and wife if their individual interests are separate. (T. D. 2090.)

Rental and Royalties: In all cases where rental or royalties accrue under terms of lease or agreement which grant to lessee certain lands and right to mine or produce therefrom, upon payment of rental fixed and determinable as to amount of payment, a royalty is based on certain fixed sum or percentage of value, payments of such rentals or royalties when they in part represent a partial return of capital originally invested in lands, will not be subject to withholding of normal tax at source.

Reserves for Losses Not Deductible: Reserves to take care of anticipated or probable losses are not a proper deduction from gross income. (Art. 126, Reg. 33.)

Annual Return, Return When and by Whom To Be Filed: Each person of lawful age whose net income is \$3,000 or over shall on or before the 4th day of March, 1914, and on or before the 4th day of March each year thereafter, shall file an accurate return of income under oath except as herein provided. (Art. 15, Reg. 33.)

Returns May Be Made by an Agent in the Case of Illness, Absence or Non-Residence: When by reason of minority, insanity, absence, sickness or other disability, an individual is unable to make his own return, same shall be made by his guardian or authorized agent. (Art. 17, Reg. 33.) Notice of failure to make return will be served upon such guardian or agent.

Return Should Be Made by Principal Rather Than Attorney in Fact: A power of attorney does not constitute a fiduciary relationship within the meaning of the income tax law and in all cases where no legal trust has been created in the estate controlled by said agent the liability under the law rests with the principal. (T. D. 2137.)

Return May Be Required Though No Tax Due: Every person having a net income of \$3,000 or more for the calendar year is required to make a return and failure to file a return will be enforced regardless of the fact that net income may be less than the exemption to which the individual is entitled. (T. D. 2090.)

Extension of Time for Filing Returns: may be given by collectors not to exceed thirty days from the time prescribed by law in which to file return if the merits of the case require such extension of time. (T. D. 1950.) But only where such failure, neglect or refusal is the result of "sickness or absence."

When return is not filed within the required time because of sickness or absence, extension of time shall be granted only upon written application and not to exceed thirty days from the time such return is required to be filed by law. (Art. 23, Reg. 33.)

Return, Where To Be Filed: If person making return of income has his place of business in district in which he resides return shall be filed with the collector of that district. If principal place of business is elsewhere return shall be filed in the district in which said business is located. (Art. 15, Reg. 33.)

Return, Erroneous, Correction by Taxpayer: All returns should be carefully scrutinized, if improperly prepared should be returned to taxpayer for correction, with instructions that if a new return is to be executed a notation should appear showing when erroneous return was

filed, so that taxpayer will not be subjected to additional tax or penalties for failure to file returns within period prescribed by law.

A record of the return of an erroneous return to the taxpayer should be kept by the collector so that if taxpayer fails to amend and forward the same, collector may take steps to secure the return.

Monthly List Returns to Be Accompanied by Exemption Certificates: Monthly list returns shall be accompanied by all certificates relating thereto, and there shall also accompany said returns all certificates claiming exemptions and reductions which are not required to be listed thereon. (Art. 35, Reg. 33.)

Return Must Be Signed and Sworn To: Return must be signed and sworn to by fiduciary with his full address. If fiduciary is an organization return must be signed and sworn to by president, secretary, or treasurer of said organization. (Art. 73, Reg. 33.)

Return Not Required if Exemption and Deduction Equal Payments: When certificates filed claiming exemptions, the full extent of payments, no return is required; but certificates should be forwarded to proper collector. Return, certificates or both, should be forwarded to collector subsequent to end of calendar year, but not later than March 1st, of succeeding year. (T. D. 2135.)

Stock, Record Owner Makes Return and Pays Tax: Such dividends on stock of domestic corporations are prima facie held to be income to record owner of stock, and said owner liable for income tax, normal or additional, according to status, unless a disclosure of actual ownership is made to Commissioner of Internal Revenue, showing that record owner is not the actual owner. Said showing shall be made on Form 1087, revised. (T. D. 2401.)

Return to Be Filed Monthly by Withholding Agents: A corporation, having bonded indebtedness, which has withheld some income during preceding month, is required to file a monthly return, Form 1012, showing amount withheld. (T. D. 2135.)

Withholding agents required to file in duplicate Form 1012, giving list of all coupons on interest payments made on which normal tax was withheld, and shall show name and address in full of owners of bonds, amount of income, amount of exemption claimed, amount of income on which withholding agent held liable for tax, and tax withheld.

Forms 1012-A, 1012-B and 1012-C are to be used where form 1012 does not afford sufficient space to enter all items.

Form 1012-D, when necessary to be used, shall be made in duplicate and be summary of monthly list return. Form 1012, as made by withholding agent and said summary and list attached, when properly signed and filed, shall constitute complete monthly return of withholding agent. (Art. 50, Reg. 33.)

Annual Return to Be Filed by Withholding Agent Receiving Coupons Without Certificates: An annual list return, Form 1044-A, required to be made by such withholding agent, showing amount of tax withheld during preceding year on income of this character. (Art. 53.) Reg. 33.)

Date for Filing Return: "Last due date" is construed to mean the last day upon which return is required to be filed in accordance with provisions of law, or the last day of the period not exceeding thirty days covered by an extension of time granted by the collector. (Art. 175, Reg. 33.)

If return is made and placed in the United States mail, properly addressed and postage paid in ample time, in due course of mail to reach the office of collector on or before the last due date, no penalty will be held to attach though return may not be actually received by such officer until subsequent to that date. (Art. 174, Reg. 33.)

Sunday and Legal Holidays: When last due date for filing returns falls on Sunday or on legal holidays, the last due date will be held to be the next day following such Sunday or legal holiday, and the return should be made to the collector not later than such following day, or if placed in the mails it should be posted in ample time to reach the collector's office, under ordinary handling of mails on or before date on which return is thus made due in office of the collector. (Art. 176, Reg. 33.)

Returns, Correction of: The returns of annual net income to be filed by corporations should be examined closely with a view to having such returns as nearly correct as possible before forwarding to this office. (Letter 1148 to Collectors.)

Returns: Verification of By Commissioner of Internal Revenue: For the purpose of verifying returns, made pursuant to this act, the Commissioner of Internal Revenue may, by any duly authorized revenue agent, cause books of such corporation to be examined, and if such examination discloses a corporation is liable to tax in addition to that of a policy holder as shall have been paid back or credited to such previously assessed, or assessable, the same shall be assessed and shall be payable immediately upon notice and demand. For the purpose of such examination, the books of corporation shall be opened to examining officer, or shall be produced for this purpose upon summons issued by any properly authorized officer. (Art. 186, Reg. 33.)

Returns Constitute Public Records and Are Open to Inspection Under Certain Restrictions: The supplementary statement shall be made a part of the return form describes for the use of corporations in making returns of annual net income is by express terms made a part of the return, and to the same extent the return constitutes a public record and is open to inspection, and to that extent the supplementary statement is also a public record and open to inspection "only upon the order of the President under rules and regulations described by the Secretary of the Treasury and approved by the President." (T. D. 2137.)

Return, Made by Commissioner of Internal Revenue: In case of refusal or neglect by corporation, etc., to make a return, and in case of false or fraudulent return, the Commissioner, upon discovery thereof within three years after such returns are due, shall make a return upon information obtained in manner provided in the Act. (Art. 177, Reg. 33.)

Returns of Income, Secrecy of Information Contained Therein: The Income Tax Law is specific and mandatory in the matter of safeguarding from publicity information acquired by reason of its requirements relative to returns of income. The law imposes the penalty of "fine, imprisonment, dismissal from office, and forfeiture of right to hold office, for making known in any manner not provided by law the amount or source of income, or any particular thereof set forth or disclosed in any income return by any person." (T. D. 2135.)

All internal revenue offices will preserve as inviolably confidential all income tax returns, as the slightest infraction of law upon this subject will be severely punished. (T. D. 1962.)

Return, Notice to Delinquents to Make Returns Within Ten Days: Where the required returns are not filed within the prescribed time, either by individuals or corporations, notice on Form 1045 should in each case be sent to the delinquent. (Art. 196, Reg. 33.)

Extension of Time for Filing Annual Return, Corporations: An extension of time within which a return may be filed can in no case exceed thirty days from date on which return is due and can be granted only upon written application to the collector, and in case of sickness or absence of an officer whose signature to the return is required, such application shall be made prior to expiration of the period for which extension is desired. (Art. 173, Reg. 33.)

Returns, Verification of by Individuals in the Naval and Military Establishment of the United States at Home or Abroad in Certain Cases: For the purpose of verification of returns of income by persons in the naval and military service in the United States any officer in the naval or military service of the United States, within or without the United States, who is authorized to administer oaths under the provisions of Section 4, Act of July 27, 1892, 27 Statute 278, providing for the administration of oaths for the purpose of military justice and administration, or under the provisions of the Act of March 4, 1917, providing for administration of oaths for the purpose of naval justice and administration, is hereby empowered and authorized to take the acknowledgment of such persons making returns of income.

In all such cases the certifying officer shall place under his name the official designation under which he acts. (T. D. 2534.)

Royalties: In a case where A sells to B under contract the right to manufacture a machine upon which he has a patent, B agreeing to pay as a royalty a certain sum of money for each machine manufactured under such patent, such sum is considered income to A, and should be included in his return.

In a case where A sells to B for lump sum patent rights, it is held that the difference between the amount received and the aggregate amount expended by him in perfecting the invention and obtaining patent is net income to A and should be included in his personal return (Deputy Commissioner L. F. Speer, January the 24th, 1916.)

Royalties From Mines: In case of mines operated by lessee on royalty basis, it is held that lessor disposing of his ores or natural deposits on basis of royalties has measure of profit in every ton of ore disposed in this way, and that so much of gross receipts on account of royalties in excess of depletion, plus any incidental expenses to which corporation may be subject, is income within meaning of Income Tax Law and should be so returned by lessor (T. D. 2152.)

Salaries of Officers or Employees paid upon their death to their widows in recognition of services rendered by husband; it is held such income is a gratuity, if no services rendered by the widow and exempt from taxation. Such a payment, however, is not an allowable deduction, as an item of expense in carrying on business, and should not be included in payor's return. (T. D. 2090.)

Securities; Losses Arising from Sale of Capital Assets and Maturity of: Losses may be sustained by individuals or corporations on personal or real property. Loss to be deductible must be an absolute loss, not speculative, and must be actually sustained during year for which deduction is sought to be made; and ascertained upon closed transaction.

A loss sustained by corporations from sale or dealings in personal or real property growing out of ownership or use of such property, will not be deductible, unless it is ascertained and determined in the above sense, within the taxable year in which deduction is sought to be made. When loss under this heading is ascertained to be deductible, entire amount of loss will be deductible except where property, in connection with which loss occurred, was acquired prior to March 1st, 1913. (T. D. 2005.)

Separate Maintenance Fund to Wife: Where a married man living apart from his wife pays her under a maintenance agreement assumes any sum of money, such payment is taxable and subject to withholding at source. The wife may have benefit of exemptions.

Shares of Beneficiaries, Name, Addresses: A fiduciary shall include in his return name, address and shares of stock of each beneficiary. Also opposite name of each beneficiary amount of exemption claimed and amount of income fiduciary liable and amount of tax withheld.

Bank and Trust Companies May Use Facsimile Signatures: For convenience of Banks and trust companies having large number of ownership certificates to execute, in collection of interest on bonds, it is provided that the name of bank or trust company may be printed and facsimile of signature of person authorized to sign for bank, etc., in executing said certificates may be printed or stamped on certificate: Provided in all such cases, a certificate of authorization is filed with commissioner of internal revenue, as provided by T. D. 2258.

Signature, Facsimile May Be Used by Collecting Agent in Signing Substituted Certificates: It is provided that name of bank or collecting agent may be printed or stamped and that facsimile of signature of person authorized to sign said certificate for bank or collecting agent may be printed or stamped on certificate: Provided, that in all such cases there shall first be filed with the Commissioner of Internal Revenue a certificate of such authorization, according to the form provided in this Treasury Decision. (T. D. 1986.)

Societies Operating Under the Lodge System: A Society operating under "Lodge System" is considered one organized under a charter, with properly appointed or elected officers, with meetings at stated intervals, supported by assessments. (Art. 89, Reg. 33.)

Source: Guardians, trustees, executors, administrators, etc., and all persons acting in any fiduciary capacity, and associations or corporations acting in capacity of fiduciary, who hold in trust an estate for another, or others, shall be designated the "Source" for purpose of collecting income tax. (T. D. 2231.)

Tabaxility of Stock Dividends Resulting From a Capitalization of Surplus Earned Prior to January 1, 1913. Stock Dividends Held To Be Income. U. S. Dist. Court, Southern District of New York. Henry R. Towne, Plaintiff, against Mark Eisner, Collector. 242 Fed. 702, June 15, 1917.

This is an action to recover income taxes paid upon stock dividends under protest. The directors of the corporation, of which plaintiff was a stockholder, having a surplus, all of which was earned prior to January 1, 1913, voted on December 17, 1913, to transfer \$1,500,000 thereof to its capital account and to apply the same to the payment of an issue of 15,000 shares of new stock of the par value of \$100 a share and to distribute this stock pro rata among stockholders of record on December 26, 1913. The actual distribution was made January 2, 1914. The effect of the dividend was to increase the capital stock from \$3,000,000 to \$4,500,000 par. The plaintiff was holder of 8,349 shares of stock of the company, and upon distribution of stock dividends received 4,174½ more. A tax of \$20,208.94 was assessed upon his stock dividend which he paid under protest, and now sues to recover.

The court held that this interest is derived from earnings and may be really of much greater advantage to the stockholder than the possibility or right which he has lost. It becomes capital of the corporation, but in his hands it is income, and in many respects resembles the common extraordinary cash dividend accompanied by a right to subscribe for additional stock at part to an amount equivalent to the dividend in cash. This distribution is considered income as far as the income tax law is concerned and as such is taxable.

Normal Tax on Undivided Annual Net Income Withheld, such tax should not again be withheld when such portion of income is actually distributed to the beneficiary, the beneficiary will account for sums so paid. (T. D. 2289.)

Taxes Paid by a Tenant: Taxes paid by a tenant are considered additional payment of rent, and an expense in carrying on business. (T. D. 2090.)

Banks paying taxes assessed against their stockholders because of their ownership of shares of stock issued by such bank cannot deduct

the amount of taxes so paid in making their return unless specially authorized to do so by the laws of the State in which they do business. The shares of stock are the property of the stockholders, and such holders are primarily liable for the tax. (Art. 154, Reg. 33.)

Bonds Containing Tax Free Covenant Clause: Stipulation in bond whereby tax which may be assessed against them, is guaranteed, is a contract wholly between corporation and stockholder in so far as Income Tax Law applies. Withholding agent responsible for normal tax due in such cases, when no exemption is claimed. (T. D. 1948.) (T. D. 2090.)

Tax Not To Be Withheld at Source: Proceeds of life insurance policies paid upon death of person insured, payments credited to insured on life insurance endowment or annuity contracts, upon return to the insured at maturity or term mentioned in the contract or surrender of same—all of which shall not be included as income under this law, but shall not be construed to exempt insurance companies from withholding normal tax on interest income paid by insurance companies to beneficiaries when interest exceeds \$3,000. (T. D. 1890.)

Income of an individual which is not fixed and payable at stated periods should not be withheld at source, but shall be listed in annual return of individual, and tax paid thereon by him. Incomes derived from following professions come under this head: Farmers, Merchants. (T. D. 1890.) Agents, compensated on commission basis, Lawyers, Doctors, Authors, Inventors, and other professional persons, whose income is irregular and indefinite.

Such persons shall make returns of their net income, provided a total income from all sources is \$3,000, or over.

Liability of Tenant Under Covenant in Lease to Pay All Taxes on Property: *Suter et al. v. Jordan Marsh Co.* 113 N. E. 580.

Trustees required to make return for persons for whom they act. Where they make distribution within taxable period, they must make return withholding normal tax. Where they act for an individual undetermined, they have a status of fiduciary and also agent for such beneficiaries, and as such are required to make return and pay tax upon income received. For the purpose of income tax, effective accumulation in the hands of trustees is held to be equivalent to distribution and sum of accumulation.

In case of trust estates where terms or trust or will or decree of court providing for keeping corpus of estate intact and where physical property of such estate has suffered depreciation through its employment in business, a deduction will be permitted from gross income for the purpose of caring for such depreciation. Where deduction is held by a fiduciary for making good such depreciation fiduciaries should set forth in return provisions of will, trust or decree requiring depreciation reduction where any exists or that may occur.

Nothing in this regulation shall be construed to deny right of trustees to make reductions from gross income for expenses incurred for repairs and such other necessary expenses necessary for the preservation of the corpus of the estate. (T. D. 2267.)

Compensation for Services as Trustee: If no determination was made of the amount due the trustee of an estate as compensation for his services over a period of years until the trust was terminated, amount allowed him to be returned in full subject to deductions as income for the year in which paid and should not be pro rated over a length of time that he served as trustee. (T. D. 2135.)

Widows required to file return on Form 1040, revised, in her own behalf if her entire income for the calendar year during which husband dies amounts to \$3,000 or more should claim specific exemption. (T. D. 2135.)

Taxes Withheld, When To Be Paid: "Amount of tax withheld during the year for which list is made may be paid to the collector at time list is filed."

In Order That Persons Whose Income Tax Is Withheld When Paid at Source, May Have Opportunity to file with source certificate claiming benefit of the deductions and exemptions provided by the law, withholding agent will not pay to collectors tax withheld by them under law until after time for filing claims for deductions and exemptions has expired. (T. D. 1965.)

Amount withheld should not be forwarded to collector until thirty days prior to March 1st, of year succeeding that in which tax withheld. (T. D. 2135.)

Fiscal Year: No return purporting to be rendered for a period other than the last day of some month should be forwarded to this office, unless such return is "final" and made to that date that corporation ceased business. (Letter No. 1148 to collectors.)

Any corporation, joint-stock company, etc., subject to tax imposed by this act, may, at its option, have tax payable computed upon the basis of net income arising or accruing from all sources during its fiscal year, provided that it shall designate the last day of the month selected as the month in which its fiscal year shall close as the day of the closing of its fiscal year, and shall not less than thirty days prior to date upon which its annual return is to be filed, give notice, in writing, to the collector of Internal Revenue of the district in which its principal place of business is located, of the day it has just designated as the closing of such fiscal year. (Art. 165, Reg. 33.)

All corporations are required to make their returns of annual net income on basis of the calendar year and to file such returns on the first day of March next following. March 1st, is therefore, due date for returns of all corporations. This due date can be postponed only in accordance with some legal or authorized action. Unless such action is taken within the prescribed time, all corporations in existence at the preceding December 1st, and failure to take such action to file a return will be held to be delinquent, and subject to 50% additional tax under penalty of the law.

The filing of returns at any date other than on or before March 1st, and on the basis of the calendar year, can be authorized only in cases wherein corporations, not less than thirty days prior to March 1st, give notice to collector of the district in which are located the principal place of business, designating in such notice the last day of the month as the close of their fiscal year.

In this case the corporations will make their returns for the year so established, and will file their return on or before the last day of the sixty day period next following the date designated as the close of the fiscal year.

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